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THE  
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# THE SOCIETY OF NATIONS

ITS ORGANIZATION AND  
CONSTITUTIONAL DEVELOPMENT

*by*  
FELIX MORLEY



WASHINGTON  
THE BROOKINGS INSTITUTION  
1932

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Published June 1932.

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To  
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*"New time makes ancient good uncouth."*



## FOREWORD

*by*

### THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS

Although the United States is not a member of the League of Nations, among no other people is intelligent interest in its structure and work more evident. A visible sign of that interest is the fact that not merely during the summer vacation period, but throughout the entire year, American citizens come to Geneva in increasing numbers to observe the activities of the great international organization which the United States played so large a part in establishing.

Among these unofficial envoys who have been welcomed at Geneva in recent years, the author of this study deserves special mention. Mr. Morley first came here as the correspondent of an important American newspaper. Later he directed the Geneva office of the League of Nations Association of the United States, showing in this work not merely extensive knowledge of the complicated international machinery established at Geneva, but also a high degree of tact and discretion in his relations with the Secretariat.

When it became known that Mr. Morley's underlying purpose, pursued during nearly three years of residence at Geneva, was the writing of the present volume, there were many besides myself who wished his project well. As was natural during the formative stages, public attention has been concentrated on what the League does rather than on what it is. It is the latter question which Mr. Morley has set himself to answer, in a manner which I believe will make his book a valuable and permanent contribution to the literature on the subject.

As Secretary-General of the League of Nations, I can fully appreciate the difficulties which have beset the author of this volume in his effort to detach and synthesize, both from official records and from official participants, the essential characteristics of the League's background, composition, and way of life. For this task the author, in whom are combined the qualities of the research worker and the trained reporter, is particularly well equipped. For the League of Nations today is too dynamic in character to be caught and fairly pictured by the purely historical method, and it is too complicated and already too deeply rooted in the past for its true lineaments to be seized by the journalist concerned only with the passing scene.

Naturally, I cannot myself accept any responsibility for the statements made in this book, nor will every student of the League agree with all of them. Many of the issues involved are so controversial that there would be some disagreement with the conclusions of any commentator. The chief need is to have assembled in handy form the essential evidence behind these debatable issues. This aim Mr. Morley has accomplished to the benefit of all who wish to understand the history, the development, and the political character of the League of Nations.

The book which Mr. Morley has produced will be of interest and value, not merely to Americans, but to all serious students of the League, whatever their nationality. Such studies are of great assistance in forwarding and guiding along realistic lines the growth of that informed public opinion on which the future of the League depends.

ERIC DRUMMOND

## PREFACE

The idea of an organized society of nations is as old as the national organization of society. But it has remained for this generation, which has so much reason to realize the consequences of international anarchy, to witness the translation of the idea to tangible reality.

The World War brought the League of Nations into being. Even without this cataclysm, however, ~~we would doubtless be observing at this time a substantial movement in the direction of regularized international co-operation.~~ During the past few decades, and with steadily accelerating pace, the advance of science has formed international contacts which are closer, more intimate, and more important for mutual well-being than, for example, were those between the American colonies prior to their political union. It is inevitable that the internationalization of economic life should be followed by a greater measure of political co-operation between the sovereign States of the world community. The war, which brought the League, <sup>into existence</sup> has only temporarily obscured this trend.

A full description and analysis of the novel international machinery authorized by the League Covenant is set forth in this volume. In his description, however, Mr. Morley has accomplished something more than a complete examination of the origins, the establishment, and the functioning of the League. This study collects for the first time in handy compass all the essential material, some of it never before published, regarding the launching of the formal association of nations. Its analysis of the machinery in operation is based on the unusual opportunities for intimate observation made available to the author during a residence of nearly three years at Geneva.



And the examination of constitutional development is brought down to include the first searching test of League efficacy as provided by the Sino-Japanese crisis which arose in the autumn of 1931. Combining the technique of the historian with that of the social scientist, the author has been able to picture not merely the constitutional evolution of the League to date, but also its inherent limitations and future potentialities.

The study is an unusual example of co-operative research of a broad and interesting nature. It was approved in outline as a Brookings Institution publication prior to the author's departure for Geneva, in the summer of 1928. The investigation at Geneva was carried on by Mr. Morley in the capacity of a Guggenheim Fellow, and with useful criticism from the faculty of the *Institut Universitaire de Hautes Études Internationales*, where he was matriculated as a research student. Every chapter, moreover, has had the benefit of scrutiny and comment by past or present workers in the field of which it treats. After Mr. Morley's return to the United States, in 1931, suggestions regarding the manuscript were made by a committee of co-operation composed of Leo Pasvolsky, Robert R. Kuczynski, and myself.

HAROLD G. MOULTON

*President*

June 1932

The Brookings Institution

## AUTHOR'S INTRODUCTION

This volume undertakes an examination of the constitutional development of the League of Nations and of its growth from the first vague paper plans to the complicated and potentially powerful international machinery now firmly established at Geneva.

It is the record, compressed into the most dramatic half-generation of history, of transition from dream to tangible reality in the field of voluntary and regularized international co-operation. It is a drama of endeavor in the field of organization which starts in a welter of international anarchy and closes with the attaining of a systematization in international relations which would have been thought impossibly Utopian prior to 1914. It is the chronicle of the birth and the initial development of an idea which involves the most difficult and the most far-reaching of all the political experiments ever attempted by mankind.

Thirteen years have now elapsed since the drafting of the Covenant at the Paris Peace Conference. In that period the indefinite outlines of the League's Constitution have been given precision; the relationships between its organs have greatly clarified; the post-war period has given place to a more realistic international psychology; and the universal effects of an unprecedented depression have demonstrated that the modern world is a single economic community which cannot safely be separated into antagonistic and mentally isolated political fragments.

While the League has accomplished much in these years, most of its work has been in the nature of foundation building for the period when governments and peoples shall desire to make use of its possibilities. For

it must always be remembered that this new organization is not yet itself a government. It is merely an association of independent and sovereign States, and therefore cannot become a truly vital force in international relations until the nations of the world, members and non-members of the League alike, wish it to fill that role.

That moral has been most clearly demonstrated by the Sino-Japanese dispute, which has laid bare many constitutional and organic difficulties heretofore apparent only to close students of the League. This grave crisis, with its far-reaching implications for international society, has cleared away the emotional atmosphere with which both advocates and adversaries have surrounded the Geneva experiment. It has shown what the League can, and cannot, accomplish in the face of as severe a test as it is ever likely to confront. In consequence, dispassionate examination of the actual character of the League of Nations has become the more useful, and the more imperative.

Much has been written on the subject of what the League *does*. This study is particularly concerned with the more vital issue of what the League *is*, and therefore with what it may become if the trend towards orderly international co-operation continues. To carry out this purpose the book is divided into two parts, the first of which examines the formation of the League, while the second describes and analyzes its functioning. While each part is a unit, and may be read as such, both are bound in an obvious unity.

During the first period the United States not merely shared, but to a large extent determined, the deliberations which decided what the League should be. During the second period the United States, partly by its abstention from membership, but even more by its early refusal to collaborate in any League undertakings, was an equally dominant factor in affecting League development. In

1920 Geneva was set the extraordinarily difficult task of launching in the face of definite American hostility an unprecedented scheme of international co-operation for which American statesmen were largely responsible. The task was accomplished, and in the succeeding years it is the United States which has again changed its attitude to draw steadily closer to the League's orbit. In lesser degree the same is true of Soviet Russia. There is no nation sufficiently powerful or self-contained to resist indefinitely the movement of the great majority of States to organize international co-operation for their mutual benefit.

It is recognized that any study of the constitutional development of the League must at this time be a preliminary essay. But while it is admittedly too early in the League's history to form final judgments—and doubtless will be so for many years to come—the time is now at hand to attempt an analysis of the trends and currents, the eddies and whirlpools, which are discernible in the record of the momentous years since 1919. These, in the aggregate, determine the stream which is the constitutional development of the League. And while only a rash prophet would dare a prediction as to the course this stream will eventually follow in the terrain of history, it is of vital current importance to notice without prejudice the direction which it has taken at its start.

This book has been planned and executed with full appreciation of the magnitude of the project and with no illusions regarding the shortcomings which must almost inevitably accompany an inquiry which considers the complicated machinery at Geneva as an organic whole. But it is evident that no study of the League can be at all exhaustive, or even completely accurate, without consideration of the ideas behind its Constitution and without examination of all the permanent parts of its machinery. The peculiarly intimate connection and reactions of the central organs of the League are of a

nature to defy successful analysis if they are treated as separate entities. To quote Sir Eric Drummond: "It must not be forgotten that all League activities are closely related to one another and interact on one another. All must be taken into account if the reader seeks to understand and realize the true meaning of the record."

The chief objective of the study is, therefore, to clarify the League of Nations, with all its promise and all its shortcomings, as the human institution and the comprehensible political experiment which it is. Without the aid and friendship of many members of the Secretariat and International Labor Office, of League committees and commissions, of the permanent delegations accredited to the League, and of Assembly and Council delegates, this ambition would have been fruitless. It follows that much of any value herein is due to the assistance of those of numerous nationalities, resident at Geneva or recurrent visitors there, who are helping to determine the direction of the League's evolution.

These workers in all fields of League activities have furnished much information which cannot be found in the official records and publications. They have provided stimulus without bearing any responsibility for the imperfections of this book. In addition to more normal research procedure it has been the task of the writer to assess, balance, select, and unify the information—much of it of a private character—thus generously placed at his disposal by friends whose number precludes the specific recognition which is their due. Nor should credit be withheld from those in Washington who have helped the author to consider American relations with the League and to examine the vital role played by the United States in the drafting of the Covenant, a period for which the source material collected and published by Mr. David Hunter Miller of the Department of State will always remain invaluable.

"Mankind," in the moving words of Jan Christian Smuts, "has, as it were, at one bound and in the short space of ten years, jumped from the old order to the new, across a gulf which may yet prove to be the greatest divide in human history. . . . What has been done can never be undone. One epoch closes in the history of the world and another opens."

It is the political architecture fitted to this new epoch which this study seeks to investigate, estimate, and explain.

FELIX MORLEY

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**PART I**

**THE LEAGUE IN PREPARATION**

■



## CHAPTER I

### THE ADVENT OF THE LEAGUE

The Covenant of the League of Nations, as has been the case with many national constitutions, owes much more to the long history of political evolution than to the hurried and harassed negotiations which actually gave it birth.

There is no need to retabulate here the background of "Grand Designs" and "Projects of Perpetual Peace" which were at one and the same time a philosophic consequence of the rise of nation-states and an effort to create for this new system of sovereign units something of the centralized authority which had characterized the medieval church and the earlier empire of Rome.<sup>1</sup> Nearly all of these schemes, as well as the more practical attempt to achieve a "Concert of Europe" after the Napoleonic Wars, can legitimately be called forerunners of the present League, just as Cromwell's "Instrument of Government" and Rousseau's *Contrat Social* may be considered vital factors behind the Constitution of the United States. Throughout the century, which followed the Congress of Vienna, international organization, forwarded by the steady improvement in transport and communications, was proceeding along numerous lines, although governments lagged rather than led in the development. But while the setting for the League was being steadily prepared behind the curtain of international anarchy, it required the lessons of the World War to make public

<sup>1</sup> Among the surveys of early proposals for organization of the society of nations may be mentioned: F. Melian Stawell, *The Growth of International Thought*; Elizabeth York, *Leagues of Nations*; and James Brown Scott's "Introduction" to William Ladd, *An Essay on a Congress of Nations*, in the edition published by the Carnegie Endowment for International Peace.

opinion effective in behalf of the practise as contrasted with the theory of such a development.

The Covenant of the League of Nations was framed in fifteen meetings of the Peace Conference Commission on that subject, sitting at Paris at intervals between the beginning of February and the middle of April 1919. From this arose the argument, the more effective because it contained more than a modicum of truth, that the drafting of the Covenant was dominated by war-time psychology. The fact that the Covenant was made Part I of the Treaty of Versailles, thus securing its acceptance by all the Allied Powers and, as events proved, assisting its rejection by the United States, served further to strengthen the popular belief that the League was in origin essentially a grouping of war victors to insure perpetual possession of their conquests.

Ample evidence is available to substantiate this belief, and the hostility to the League which it engendered, prior to Germany's entry, not merely in the defeated countries but also among many sincere and impartial advocates of regularized international co-operation. Much of it will be found, in the appropriate connections, throughout this book.<sup>2</sup> So strong is this evidence, when taken out of its context, or when left unopposed by equally valid source material on the other side, that the lack of neutral esteem for the League during its early years is not surprising. And it is possible that some of the more ardent friends of the Geneva experiment have by turning apologist contributed as much to the misconception as its foes. Very frequently during the early years of League history its shortcomings were palliated by references to the environment in which, and the speed with which, the Covenant

<sup>2</sup> As an extreme case may be cited a remark made by M. Spalaikovitch, of Yugoslavia, at the Second Assembly, in 1921: "... The duty of the League of Nations is to strengthen peace and more especially the peace which is the outcome of the last war, and it is to this end that the efforts of all its members should be directed."

was drafted. In short, there has been inadequate appreciation of the fact that both political and economic evolution had been pointing to the development of a league of nations for years in advance of the disaster of 1914. Many Americans, in particular, in considering the part which should be played by their government in organized international intercourse, have seemed to be ignorant of George Washington's anticipation of the time when "our institutions being firmly consolidated and working with complete success, we might safely and perhaps beneficially take part in the consultations held by foreign States for the advantage of the nations."<sup>8</sup>

#### AN OBJECTIVE OF BOTH BELLIGERENT GROUPS

The League as it exists today was therefore born of the war in a much deeper sense than is indicated by the incorporation of its Covenant as an integral part of the Treaty of Versailles. Wherever and whenever the outraged sense of human solidarity could escape from the actual problems of belligerency, it reacted in favor of some form of international organization which would at least make more difficult a repetition of the world disaster. And nowhere was this reaction more pronounced, during the thirty-two months which intervened between the commencement of hostilities and American participation therein, than in the United States. Here, in the League to Enforce Peace, was found during the early war years an organization, backed by some of the nation's outstanding political leaders, with a program of inter-State collaboration quite as revolutionary as that ultimately achieved in the League Covenant. Historically, that program traces to a pre-war speech by Theodore Roosevelt, who, in accepting the Nobel Peace Prize Award in 1910, said: "Finally, it would be a master stroke if those great

<sup>8</sup> Quoted by George N. Blakeslee in *The Recent Foreign Policy of the United States*, p. 20.



powers honestly bent on peace would form a league of peace, not only to keep the peace among themselves, but to prevent by force if necessary, its being broken by others.”<sup>4</sup>

~ To President Wilson, in spite of his careful abstention from indorsing the League to Enforce Peace or similar pre-Armistice plans, the necessity of establishing a league of nations after the war was throughout a clear-cut conception. As early as the autumn of 1914 he foresaw the time when “all nations must be absorbed into some great association of nations whereby all shall guarantee the integrity of each so that any one nation violating the agreement between all of them shall bring punishment on itself automatically.”<sup>5</sup> Indeed, a definite guarantee clause, containing the essence of Articles 10 and 16 of the League Covenant, was even at this time clearly in the mind of the war-time President of the United States. Professor Seymour tells how, on December 16, 1914, Mr. Wilson “discussed with Colonel House the possibility of introducing a direct guarantee for the preservation of peace in the Americas. He was planning at that time the negotiation of a general Pan American pact, and wrote out on his own typewriter, as the basic formula of such a convention, the words: ‘Mutual guarantees of political independence under republican form of government and mutual guarantees of territorial integrity.’”<sup>6</sup> Throughout 1916, while campaigning for re-election, Mr. Wilson continuously advocated the idea of a league of nations, sometimes emphasizing, and sometimes omitting the

<sup>4</sup> Quoted in the *Outlook*, Vol. 95, p. 19.

<sup>5</sup> Quoted by Charles P. Howland (editor) in *Survey of American Foreign Relations*, 1928, p. 237.

<sup>6</sup> Charles Seymour, *The Intimate Papers of Colonel House*, Vol. IV, p. 2. See also Vol. I, Chap. 8. The proposed Pan American pact, though never brought to completion, was in specific language and general intent a prototype of the League Covenant. The guarantee clause was the first of the four articles composing its final draft. For text see Seymour, Vol. I, pp. 233-34.

mutual guarantee proposal. Emphasis on the general principle of a league in his peace note of December 1916, is said to have "occasioned the formal commitment of the Allies in its favor."<sup>7</sup> And on January 8, 1918, in enunciating to Congress the "only possible program" of world peace, the President stated as the last of his famous Fourteen Points the principle that:

A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small States alike.

But the establishment of a league of nations was not merely a predominant American war aim. The prestige and importance of the United States insured, after April 1917, that it should be a war aim of the Allied Powers as well. The Central Powers, moreover, indorsed the idea in their replies to the Papal Note of August 16, 1917. That the Covenant should be an integral part of the treaties which closed the war was, therefore, the most logical of outcomes, entirely aside from the fact that this was the easiest and most certain method of getting the League launched.

Since the war was the fulcrum which enabled advocates of the idea to bring a league of nations to reality, it should occasion no surprise that war experience tinged much of the preliminary theory on the subject. While the Peace Conference Commission on the League held its first meeting on February 3, 1919, not quite three months after the Armistice, men in different countries had been at work long prior to that time, preparing tentative constitutional foundations for the development. It was this

<sup>7</sup> Howland, *Foreign Relations*, 1928, p. 238. The text of the note, signed by Robert Lansing as secretary of state, is found in *The New Democracy* (The Public Papers of Woodrow Wilson) edited by Ray Stannard Baker and William E. Dodd, Vol. II, p. 404. Therein it is stated that "Each side . . . is ready to consider the formation of a league of nations to insure peace and justice throughout the world."

preliminary effort which enabled the architects at Paris to build with such relative speed, and it was the character of these preliminary blueprints which to a large extent determined the political philosophy of the Covenant as eventually drafted.

#### PROGRAM OF THE LEAGUE TO ENFORCE PEACE

From the beginning of 1915 the league idea was in the air. A Dutch "Anti-War Council" was established early in that year and in meetings at The Hague, in April, this council created a "Central Organization for a Durable Peace" having members in most of the countries of Central and Western Europe. About the same time a British "League of Nations Society" was formed in London. On May 3, 1915, this organization adopted a program to be based upon "a treaty binding members to peaceful settlement of all disputes" and providing for united action by the contracting parties to insure that "every member shall abide by the terms of the treaty." Almost simultaneously the first American program was put forward by former President Taft in an address before the World Court Congress, at Cleveland, Ohio, on May 12, 1915.

The principles then published, all of which are today integrated into the League's Constitution, had been formulated by a small group of prominent Americans in a series of meetings which terminated a month earlier.<sup>8</sup> It was Mr. Taft who gave these principles the definite form in which they were submitted in the Cleveland speech, to be embodied, without substantial change, as the definitive program of the League to Enforce Peace, organized at Independence Hall, Philadelphia, on June 17, 1915. As laid down by Mr. Taft at Cleveland the fundamental plan of the "League of Peace" contained four provisions:

<sup>8</sup> Theodore Marburg, *Development of the League of Nations Idea*, 1932, pp. 703-17.

First: It ought to provide for the formation of a court, which would be given jurisdiction by the consent of all the members of the League, to consider and decide justiciable questions between them or any of them, which have not yielded to negotiation, according to the principles of international law and equity, and that the court should be vested with power, upon the application of any member of the League, to decide the issue as to whether the question arising is justiciable.

Second: A Commission of Conciliation for the consideration and recommendation of a solution of all non-justiciable questions that may arise between the members of the League should be created, and this Commission should have power to hear evidence, investigate the causes of difference, mediate between the parties and then make its recommendation for a settlement.

Third: Conferences should be held from time to time to agree upon principles of international law, not already established, as their necessity shall suggest themselves. When the conclusions of the Commission shall have been submitted to the various parties of the League for a reasonable period of time, say a year, without calling forth objection, it should be deemed that they acquiesce in the principles thus declared.

Fourth: The members of the League shall agree that if any member of the League shall bring war against any other member of the League, without first having submitted the question, if found justiciable, to the arbitral court provided in the fundamental compact, or without having submitted the question, if found non-justiciable, to the Commission of Conciliation for its examination, consideration and recommendation, then the remaining members of the League agree to join in the forcible defense of the member thus prematurely attacked.

The first of these proposals of the League to Enforce Peace has found fulfillment in the Permanent Court of International Justice (Article 14 and Article 13 (3) of the Covenant). The second foreshadowed the conciliatory and arbitral functions of the Council (Article 15). The third proposal, while nowhere expressly written into the League Covenant, is to an increasing extent embodied in the quasi-legislative function of the Assembly, which with the help of the League's technical committees and

commissions, and the draft international conventions which spring therefrom, is steadily extending the scope and consolidating the field of international law.<sup>9</sup> As for the fourth proposal, it stands as one direct and lineal ancestor of the much-debated Article 16 of the present Covenant.

#### THE PHILLIMORE PLAN

The influence of the program of the League to Enforce Peace is perceptible in "the first formulation of League of Nations' suggestions in a definite text under governmental direction."<sup>10</sup> This was the draft convention drawn up in nine meetings of the distinguished committee of British historians, lawyers, and diplomats presided over by the late Lord Phillimore and submitted, with an explanatory covering letter,<sup>11</sup> to the British government on March 20, 1918. Its background traces to a memorandum on a league of nations prepared by Lord Robert Cecil in September 1916 and forwarded by him to Sir Edward Grey, then foreign minister. Appointment of the Phillimore Committee, and its elaborate plan, resulted from this initiative by Lord Robert Cecil, who from the beginning played quite as notable a pro-League role in Great Britain as did President Wilson in the United States. As pointed out by Mr. David Hunter Miller, "the historian will find in the Covenant a great deal of the Phillimore plan," even though the differences

<sup>9</sup> There is no doubt that Mr. Taft foresaw international legislation as a desirable function of the League. In this Cleveland speech, four years before the Covenant was drafted, he said that: "Something in the nature of legislation . . . would be a valuable supplement to existing international law. It would be one of the very admirable results of such a League of Peace, that the scope of international law could be enlarged in this way. . . . In a League of Peace there is no limit to the power of international conferences of the members, except the limit of the wise and practical."

<sup>10</sup> So defined by David Hunter Miller in *The Drafting of the Covenant*, Vol. I, p. 3.

<sup>11</sup> For text see Miller, Vol. I, pp. 4-8.

between this pre-Armistice draft and the Covenant as approved thirteen months later are more marked than the resemblances.

An essential difference between the Phillimore plan<sup>12</sup> and that of the League to Enforce Peace is that the former made no provision for a permanent court of international justice, which is a distinctively American (though non-Wilsonian) contribution to the systemization of organized international co-operation. The Phillimore plan, moreover, avoided any semblance of confederation in favor of a grouping which, at the outset, would have been limited to the Allied States, with the prevention of war among its members as the sole objective. It was specifically advised that "the ordinary diplomatic representatives at the capital which is the seat of the Conference should represent their respective States."<sup>13</sup> This Conference, which is the basis of the present Assembly, was to be vested with powers of inquiry and recommendation in any dispute between the covenanting States not voluntarily submitted by them to arbitration.

On the question of unanimity the Interim Report of the Phillimore Committee stated that "we have concluded to eliminate the States parties to the dispute, but the precedents in favor of unanimity are so invariable that we have not seen our way to give power to a majority, or even a preponderant majority, to issue a definite recommendation."<sup>14</sup> The importance of this point was strikingly illustrated when the Japanese government, during the Manchurian crisis of 1931, completely disregarded a Council resolution requesting withdrawal of Japanese troops "into the railway zone" by a specified date—November 16. This resolution was adopted on October 24 by a vote of thirteen to one, only Japan opposing, but

<sup>12</sup> The text of the Phillimore plan is Document 1 in Miller, Vol. II.

<sup>13</sup> Phillimore Committee, *Interim Report*, par. 13.

<sup>14</sup> The same, par. 14.

since it was taken under Article 11 of the Covenant, with the disputants represented, the Japanese government considered itself untrammelled, under the unanimity rule.

The sanctions provisions of the Phillimore plan are contained in its second article, which may profitably be compared to paragraph 1 of Article 16 of the League Covenant as it stands today. It is to be noted that this pre-Armistice British draft contained the first detailed formulation of the fourth point in the League to Enforce Peace program, and that the details of international police action there laid down remain in substance the present obligation. The Phillimore Committee gave consideration to the proposal that the League should be made a defensive alliance against Powers external thereto, as contemporaneously recommended by the British League of Nations Society. But it noted that "the American League to Enforce Peace has omitted this provision" and therefore decided (in Article 15 of the Phillimore plan), to make joint action by the League against an external aggressor, facultative only. The final Covenant, in Article 17(3), makes sanctions applicable for recalcitrant non-member States which resort to war against a member of the League.

Article 2(1) of the Phillimore draft and Article 16(1) of the present League Covenant compare as follows:

#### PHILLIMORE DRAFT

##### Article 2

If, which may God avert, one of the Allied States should break the Covenant contained in the preceding article, this State will become *ipso facto* at war with all the other Allied States, and the latter agree to take and to support each other in taking jointly and severally all such

#### FINAL COVENANT

##### Article 16(1)

Should any member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other members of the League, which hereby undertake immediately to subject it to the sev-

measures — military, naval, financial, and economic—as will best avail for restraining the breach of the Covenant. Such financial and economic measures shall include severance of all relations of trade and finance with the subjects of the Covenant-breaking State, prohibition against the subjects of the Allied States entering into any relations with the subjects of the Covenant-breaking State, and the prevention, so far as possible, of the subjects of the Covenant-breaking State from having any commercial or financial intercourse with the subjects of any other State, whether party to this Convention or not.

erance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the Covenant-breaking State and the nationals of any other State, whether a member of the League or not.

#### THE OFFICIAL FRENCH OUTLINE

Chronologically, the next outline scheme contributory to the final Covenant is the report, dated June 8, 1918, of the French Ministerial Commission for the League of Nations. This is in the form of a statement of principles rather than a draft treaty,<sup>15</sup> but is none the less instructive in showing the official French viewpoint on the League before that attitude was colored by post-war political considerations. The commission which prepared the plan was under the chairmanship of Léon Bourgeois, who was strongly opposed to early German entry into the League.<sup>16</sup>

This draft also provided for a continuation of an alliance system, with strong emphasis on sanctions and the

<sup>15</sup> The text is given in Miller, Vol. II, pp. 403–11.

<sup>16</sup> Compare Seymour, Vol. IV, p. 239.



maintenance of peace by force. Although it expressly stated that "*La Société des Nations n'a pas pour objet l'établissement d'un état politique international*," it nevertheless envisaged a standing international army with commander-in-chief and permanent general staff. Particularly noteworthy is the ruthlessness of the measures proposed to exercise "*une contrainte efficace sur l'Etat qui aura méconnu le pacte social*." These included not merely such measures as a rigorous blockade, but also a long list of contemplated legal sanctions, to be directed against nationals of the recalcitrant State, among which may be mentioned their exclusion from law courts in countries members of the League, and the suspension of copyright protection in the case of authors. Such a program, the mere existence of which would have unpredictable effects on the normal course of peaceful international life, could scarcely commend itself to the Anglo-Saxon mind. The basic principle of the utilization of military force by the League in order to preserve peace was, however, never abandoned by the French government from this time on. And it seems to have found a certain contemporary favor with Lord Robert Cecil who, in a letter to Colonel House dated July 22, 1918, used the French proposals for the basis of the statement that: "I am convinced that unless some form of coercion can be devised which will work more or less automatically no league of peace will endure."<sup>17</sup>

In other respects this war-time French draft showed a more constructive nature. It advocated a world court for justiciable disputes, the execution of its decisions to be insured, if necessary, by "*l'application de sanctions diplomatiques, juridiques, économiques, militaires*." It vaguely adumbrated the present economic organization of the League, though with the idea of punitive rather than constructive use. And in what was called the Per-

<sup>17</sup> Quoted in Seymour, Vol. IV, p. 40.

manent Delegation, the present Secretariat was foreshadowed, though the membership suggested for this body was fifteen, a number more than forty fold increased by the time the existing League was a decade old.

#### THE HOUSE DRAFT

On July 8, 1918 President Wilson asked Colonel House to re-write the Phillimore Committee's draft constitution for the League, "as you think it ought to be re-written, along the lines of your recent letter to Lord Robert Cecil." In this letter Mr. House had laid down the principles that "any war, no matter how remote or how insignificant the country involved, is the concern of all nations"; that, "the members of the League shall guarantee each other's territorial integrity"; that, "one of the fundamental principles of the League shall be a declaration that each signatory nation shall bind itself forever to maintain the same standard as that maintained among people of honor so that any nation that failed to live up to the letter and spirit of this agreement shall be held up to public condemnation"; and that in the event of a country resorting to war in defiance of an award under compulsory arbitration "it shall become obligatory upon every nation in the League to immediately break off all diplomatic, financial and economic relations of every character and, when and where possible, also exert physical force against the offender."<sup>18</sup>

When President Wilson made this request he had apparently not even read the Phillimore draft,<sup>19</sup> so that his desire to have it "re-written" is not to be regarded as indicating anything more than an anxiety that there should be, at this pre-Armistice stage, an official American plan for the League Covenant in existence. But the President's suggestion that this American plan should be

<sup>18</sup> For the full text of this letter see Seymour, Vol. IV, pp. 18-20.

<sup>19</sup> Compare Seymour, Vol. IV, p. 22.

drafted "along the lines" of House's letter to Lord Robert Cecil is significant. For that letter, beyond striking at the heart of the traditional American doctrine of isolation, had asserted the principles of territorial guarantee and obligatory international police action against an aggressor which were later to be embodied in Articles 10 and 16 of the League Covenant. In the light of later history it is desirable to note that the parts of the Covenant which have been most condemned in the United States had American initiative in their origin.

Colonel House formulated his *Suggestion for a Covenant of a League of Nations* in two days—July 13 and 14, 1918. In a letter sent to President Wilson immediately on its completion he pointed out that:

The draft was written without reference to the British covenant [Phillimore plan] which you sent. When finished the two were compared and several of the articles of the British were incorporated as a whole. In my opinion the British document would not at all meet the requirements of the situation. The reason I wrote the draft without reference to the British was to keep from getting intangled with their plan.<sup>20</sup>

The House draft was, as its author claimed, "written with a view of not hurting the sensibilities of any nation either in the Entente or the Central Powers." It contained none of the war-time alliance atmosphere so apparent in both the British and French trial programs. The emphasis of its provisions was moral and legal rather than penal, and the sanctions clauses did not specify military action beyond blockading and closing the frontiers of an aggressor State. The league envisaged would, like that adumbrated by the French plan, have been a league of diplomats, and it was admittedly designed "with a view that the league might be confined to the Great Powers, giving the smaller Powers every benefit that may be derived therefrom." While a good deal of the House

<sup>20</sup> Quoted in Seymour, Vol. IV, p. 24.

draft found its way into the eventual Covenant of the League, its form of organization was very different to that which has actually evolved.<sup>21</sup>

In certain respects, however, the suggestions made by Colonel House were extremely acute, and have proved of enduring value. He was the first to specify a paid secretariat for the League, and he stipulated an international court, of not more than fifteen members, as "a necessary part of the machinery." The House draft laid great stress on arbitration, which it would have made compulsory between the signatories. Territorial modifications of any treaty arrangement were envisaged.<sup>22</sup> The reduction of armaments and the abolition of their manufacture by private enterprise were demanded. And the eventual provision of Article 11(1) of the Covenant for emergency meetings of the Council to safeguard peace was foreshadowed by the specification of the House draft that: "The delegates shall meet in the interests of peace whenever war is rumored or threatened, and also whenever a delegate of any Power shall inform the delegates that a meeting in the interests of peace is advisable."

#### WILSON'S FIRST DRAFT

President Wilson's first draft covenant was written shortly after his receipt of the House draft, and was for the most part merely a new edition thereof, with the alterations largely those of phraseology. It was completed by August 15 (1918) when the President read it

<sup>21</sup> The text of the House draft is Document 2 in Miller, Vol. II.

<sup>22</sup> The reasons cited for this in House's covering letter to Wilson are not without an unconscious humor. "It is quite conceivable," he wrote, "that conditions might so change in the course of time as to make it a serious hardship for certain portions of one nation to continue under the government of that nation. For instance, it is conceivable that Canada might sometime wish to become a part of the United States. It is also a possibility that Chihuahua, Coahuila or Lower California might desire to become a part of this country and with the consent in each instance of the mother country."

to Colonel House at Magnolia.<sup>23</sup> The changes of significance were that Mr. Wilson omitted any reference to an international court and that he laid much greater emphasis than did House on the utilization of sanctions against an aggressor State. The President implicitly denied the existence of any neutral trading rights in war-time when, in Article X of his first draft, he stipulated that as against an aggressor the members of the League shall "unite in blockading and closing the frontiers of that Power to all commerce or intercourse with any part of the world, employing jointly any force that may be necessary to accomplish that object." In the same article President Wilson further maintained that "the Contracting Powers shall also unite in coming to the assistance of the Contracting Power against which hostile action has been taken, combining their armed forces in its behalf."<sup>24</sup>

In his first draft for the League Covenant President Wilson linked together arbitration, disarmament, and security in a manner much more prophetic of the Geneva Protocol of 1925 than of the actual League Constitution produced in Paris in 1919. Disarmament and arbitration, both between League members and as between them and outside Powers, were obligatory in Mr. Wilson's plan. Security was to be provided by military and naval sanctions exercised under the ægis of the League.

The preamble of this draft covenant, which was original with the President, may profitably be compared with that of the final Covenant. Mr. Wilson's contribution in this respect is the more notable because of the constitutional importance of the League preamble, the generalities of which have on numerous occasions permitted activities for which a strict interpretation of the body of the Covenant would seem to give small latitude.

<sup>23</sup> Compare Seymour, Vol. IV, pp. 48-50.

<sup>24</sup> The text of Wilson's first draft is Document 3 in Miller, Vol. II.

PREAMBLE OF WILSON'S  
FIRST DRAFT

In order to secure peace, security, and orderly government by the prescription of open and honorable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments, and by the maintenance of justice and a scrupulous respect of all treaty obligations in the dealings of all organized peoples with one another, the Powers signatory to this Covenant and agreement jointly and severally adopt this Constitution of the League of Nations.

PREAMBLE OF COVENANT  
The High Contracting  
Parties,

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just, and honorable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another.

Agree to this Covenant of the League of Nations.

Following the preparation of Mr. Wilson's first draft for a League Covenant, which received no contemporary publicity because of the President's expressed aversion to premature discussion on so delicate a subject,<sup>25</sup> there ensued a lapse in the formal designing of constitutions for the coming international society. The war was entering its final stages and the immediate problems connected therewith left little opportunity for perfecting the plans already sketched by the British, French, and American governments. Not until December 16, 1918, five weeks after the signing of the Armistice, and two

<sup>25</sup> "He [Wilson] sees grave dangers in public discussions as to details and methods." Cable from Sir William Wiseman to Lord Reading, Aug. 16, 1918. Quoted in Seymour, Vol. IV, p. 53.

days after President Wilson's arrival in Paris, was another authoritative program for League organization put forward. But when this document came, from the persuasive pen of Jan Christian Smuts, it proved to be one of very great influence on the final form of the Covenant. Probably this was not entirely due to the intrinsic value of the new proposals, but at least partially also to the fact that the Smuts plan came from a country remote from any of the great national centers, from a small country which could not expect to play any dominating role in the League when established, and from a leader in that country whose life-story had shown him equally loyal in the defense of the rights of small nations, and to the ideals of international integration which require that the rights of all nations, large and small alike, be sometimes subordinated to the common welfare.

#### THE SMUTS PLAN

The *Practical Suggestion* of General Smuts was the first draft covenant at all deeply tinged with the idealism for which the post-war world was waiting. And its appeal in this direction was the greater because the definitive proposals were supported with lengthy pleading, effective even when it seemed designed to conceal a certain casuistry in the argument. Thus the credit which General Smuts has widely received as an originator of the mandates system, to which the first part of the plan is devoted,<sup>26</sup> must not conceal the fact that he would have made it applicable only to Austrian, Russian, and Turkish territory, excluding the German colonies. But since his plan contemplated the surrender of these by Germany the apparent outcome would have been the outright

<sup>26</sup> A year earlier, in a memorandum on Mesopotamia written by George Louis Beer at the close of 1917, the project for a mandate was sketched out. The idea is found in the fifth of President Wilson's Fourteen Points and he had discussed it in some detail before the publication of the Smuts draft. Compare Seymour, Vol. IV, pp. 283-85.

incorporation of German Southwest Africa, for instance, in General Smuts' own country, the Union of South Africa. However, such implicit reservations to his formula of "no annexations" are no minimization of the constitutional importance of the Smuts draft.

In the Articles (10-14) devoted to the constitutional organization of the League, the Smuts plan came closer than any of its predecessors to the ultimate arrangement.<sup>27</sup> With respect to the composition of the Council, indeed, this *Practical Suggestion* in one instance foreshadowed the present outcome more accurately than did the Covenant itself. "The Council," asserted Article 12 of the Smuts draft, "will be the executive committee of the League, and will consist of the prime ministers or foreign secretaries or other authoritative representatives of the Great Powers *together with the representatives drawn in rotation from two panels of the Middle Powers and minor States respectively*, in such a way that the Great Powers have a bare majority." The part which is here italicized contains the germinal idea of regional representation on the Council, which has now become an accepted principle in the election of the non-permanent members. Smuts clearly showed that he had this development in mind when in his commentary on this article he wrote that: "All the important States of South America might desire to form a group for purposes of representation on the Council. Or a similar group might be formed by all the Balkan and South Slav States, or another by the small States of Northern Europe."<sup>28</sup>

While every preliminary plan for the League envisaged, almost of necessity, the occasional general conference of member States which has developed into the Assembly, the Smuts draft was the first to give any careful con-

<sup>27</sup> The text of the Smuts' draft is Document 5 in Miller, Vol. II.

<sup>28</sup> The operation of the present-day bloc system in the election of Council members, thus foreshadowed by General Smuts, is discussed in Chaps. X and XV below.



sideration to the desirability of a smaller executive body. "The real work of the League," he argued, "will be done by its Council," which "would have to be a comparatively small body, as it is not possible to have executive action taken and most difficult contentious administrative work done through a larger body." The British Empire, France, Italy, the United States of America, and Japan, Smuts thought, should be permanent members of this body, "to whom Germany will be added as soon as she has a stable democratic government."

In defining the permanent core of the Council; in breaking with war-time psychology to demand that Germany at the earliest possible moment be counted the peer of the Great Powers; in stipulating a rotating membership of lesser States on the executive body; in arguing that "the Powers represented on the Council should send to it representatives of the highest standing and authority"; in proposing that any State not represented on the Council should be called into consultation when that body considers a problem directly affecting the interests of the unrepresented country; in predicting that the Council "will have to pay special regard to those situations all over the world which may develop differences and troubles of a serious character between States"—in at least all these particulars General Smuts exhibited what would seem a remarkable prescience regarding the development of the Council were it not for the fact that his *Practical Suggestion* had so much to do with determining the characteristics which that body later assumed.

In his anticipation of the League's Assembly General Smuts was less far-sighted and effective. Successive designers of the Covenant followed his suggestion that "the initiative for the work of the Conference [Assembly] should be left as much as possible to the Council," but it is noteworthy that the tendency of the League in being has been rather in the opposite direction. Although

one of the outstanding features of the constitutional development of the League has been the progressive and successful effort of the Assembly to extend its powers, none of the early Covenant-makers, for all their tributes to the rights of small nations and the desirability of democracy, seemed able to view such a development without extreme mistrust. General Smuts, for instance, while stating his desire not to have the Assembly regarded as "a futile debating society," was perhaps more solicitous lest it should develop "as a dangerous body whose debates are likely to inflame the slumbering passions of the national populations."

Yet the political philosopher from South Africa was able, even in this field where his insight in retrospect seems deficient, to make comments which the event has proved significant. He foresaw the influence of the Assembly as a vehicle for widespread publicity, and therefore as a potent factor in molding international public opinion. He made the notable suggestion that delegations to the Assembly might well be national rather than purely governmental in composition, observing that "perhaps even parties could be represented by the selection of members on the principle of proportional representation," a thesis which has had considerable theoretical support and a certain measure of practical adoption.<sup>29</sup> On the whole, however, General Smuts failed either to visualize or to influence the evolution of the Assembly. His attitude was summed up by his remark that "the resolutions to be brought up for discussion in the Conference [Assembly] should be carefully selected by the Council on the principle of avoiding those contentious issues on which national passions are easily inflamed."

Eleven years later it was the Assembly, not the Council, which Premier Briand selected as the forum for broaching his scheme for European federal union. And

<sup>29</sup> See pp. 115-16 below.

it was in the Assembly session of 1931, not at any of the Council meetings of that year, that Foreign Minister Grandi of Italy proposed a holiday in military preparations during the period of the World Disarmament Conference.

The *Practical Suggestion* of General Smuts likewise failed to envisage in the Secretariat anything like the powers and responsibilities which the evolution of the League has brought to it. He did, indeed, foresee that "the head office organization will have to be like that of a general staff which studies and watches closely all conditions anywhere developing which might call for action or counsel on the part of the League." But in his summation of constitutional organization he refers to the three branches of the League as the General Conference, the Council, and the Judiciary. Obviously, no present-day constitutional consideration of the League could afford to ignore the Secretariat as a separate functional entity.

Smuts' consideration of the technical committees necessitated by the new organization, however, showed foresight similar to that shown in his analysis of the coming Council. In the method of appointment of these committees (by the Council);<sup>80</sup> in the duties adumbrated for them (regulation of conditions of transit, removal of economic barriers, protection of minorities, etc.); in the proposal (the basis of Article 24 of the present Covenant) that bodies performing international functions in accordance with treaty arrangements should be placed under the administration of these committees appointed by the Council, the *Practical Suggestion* sketched out a technique which to a large extent has actually been followed by the League. And in one instance the organizational development of the League might have been more logical had it followed this early outline. "The vast sub-

<sup>80</sup> See Article 13 of the Smuts plan.

ject of industrial conditions, involving international labor conditions," said General Smuts, will be one of the "thorny subjects" calling for expert technical committees "which could prepare the material for a final expression of opinion by the League." Smuts saw the International Labor Organization as a subordinate League commission, not as the autonomous body which was created by Article XIII of the Treaty of Versailles. There will be occasion later to consider whether his deliberations on this subject were more logical than the design accepted.<sup>31</sup>

Several pages of the Smuts plan, culminating in Articles 15-17, dealt with the subject of disarmament as a League function. Herein, after having earlier specifically rejected the super-State conception, and argued that "we shall likewise have to abandon all ideas of federation or confederation as inapplicable to the case," General Smuts was driven into a paradoxical position. He begins with some rather metaphysical discussion on the necessity of having "the new motive of peace . . . operate internally, constantly, inevitably, from the very heart of our political organization," which had in his argument been previously deprived of any real political authority. This is followed by the suggestion that "the system of peace" should be applied to the Great Powers, though through what agencies or by what means it was to be applied is not clear, the less so as it had already been argued that the real work of the League must be done by its Council, in which Smuts believed the Great Powers should dominate.

The irreconcilability between the author's canny political sense and his inspiring but vague idealism here produces a sense of futility, noteworthy because the same *motif* of frustration recurs throughout the whole tangled theme of the League's direct effort for disarmament. The concrete suggestions of General Smuts, for abolition of conscription and nationalization of munition factories

<sup>31</sup> See pp. 621-23 below.

the Great Powers, if possible choosing a national of some other country." Otherwise this brief document contributed little to the mass of suggestions already accumulated and was influential largely because it seemed to lean backwards to the psychology of the Congress of Vienna and brought the prestige of Lord Robert Cecil to the support of those who wished the League to be nothing more than a perpetuation of the victorious war-time alliance. It was relieved, however, by an engaging frankness, as when its author advised the exclusion from the League of Soviet Russia as a "definitely untrustworthy and hostile State," and added that "otherwise it is desirable not to be too rigid in scrutinizing qualifications, since the small Powers will in any case not exercise any considerable influence."<sup>33</sup>

The peace preservation machinery of the Cecil sketch was largely based upon that proposed in the Phillimore report. The organization contemplated an annual council of "prime ministers and foreign secretaries" [*sic*] of the British Empire, United States, France, Italy, Japan, "and any other States recognized by them as Great Powers," which would in effect have meant a perpetuation of the Allied Supreme War Council. The General Conference (Assembly) of all member nations would normally meet only every four years, with provision for the summoning of special conferences "on the demand of any one of the Great Powers or, if there were danger of an outbreak of war, of any member of the League." Military sanctions both against member and non-member aggressors were favored, this being a principle which Lord Robert Cecil regarded as essential to the very existence of the League. In short, there can be little dissent from Mr. Robert Lansing's analysis of the document as one "intended to place in the hands of the Five Powers the control of international relations and the direction in

<sup>33</sup> Cecil plan, Section I, par. 1.

large measure of the foreign policies of all nations. It was based on the power to compel obedience, on the right of the powerful to rule."<sup>34</sup>

The draft covenant of General Smuts and the supplementary sketch by Lord Robert Cecil were thrown into the general pot as President Wilson arrived in France and started his conferences with the Allied statesmen. In two basic respects a general accord was already achieved. Without exception the various drafts agreed upon the necessity of sanctions and the desirability of control by the Great Powers, meaning, at the outset anyway, control by the dominant Allies. Wide, but not irreconcilable, differences on other points separated these preliminary constitutions for the League. The work at Paris, to which we now turn, was largely a matter of composing these differences, springing from differing national ideals and interests. It was a work of compromise as much as of origination.

<sup>34</sup> Lansing, p. 88.

## CHAPTER II

### THE ANGLO-AMERICAN ACCORD

In the development of the League Covenant, from the mass of preparatory material outlined in the preceding chapter to the form given it in the Treaty of Versailles, two entirely distinct stages are apparent. The first of these concerns the Paris negotiations, primarily Anglo-American in character, prior to the first meeting of the formal Peace Conference Commission on the League of Nations. The second stage is found in the sessions of this Commission, from February 3 to April 11, 1919, which were in turn divided into two periods by President Wilson's visit to the United States during the Conference. As this chapter will show, the outline of the final Covenant was sketched in some detail before the Peace Conference Commission on the League got under way.

While English and American political thought, the intervention by General Smuts alone excepted, had dominated in the preparation of the early draft covenants, Anglo-Saxon leadership was even more pronounced during the crucial days of January 1919 when these first drafts were being reconciled. At this time there was virtually no French participation in the project, the attitude of that nation's leaders varying from open skepticism to unenthusiastic toleration of the League idea.<sup>1</sup> To the

<sup>1</sup> Compare Charles Seymour, *The Intimate Papers of Colonel House*, Vol. IV, pp. 251-52: "The early conversations between Clemenceau and Wilson, which took place soon after the President reached Paris, indicated how far apart were their ideas on the peace. Clemenceau insisted above everything upon the security of France; the League of Nations he regarded as a luxury, perhaps a danger. Wilson made plain in his first conference with House, on December 14, that he intended 'making the League of Nations the center of the whole program and letting everything revolve around that. Once that is a *fait accompli*, nearly all the very serious difficulties will disappear.' In the case of Italian claims, it soon appeared that Wilson would find himself quite as much at variance with Orlando and Sonnino." Compare also André Tardieu, *The Truth About the Treaty*, p. 88.

Italian spokesmen the creation of the League was a matter of infinitely less importance than the securing of the strategic frontier made possible by the collapse of the Austro-Hungarian Empire. The Japanese delegates were shrewdly observant of the League development, but from the side-lines only. In the days prior to the convening of the Peace Conference Commission nobody else counted.<sup>2</sup> This Anglo-American predominance in the League's formative period is a difficult fact to circumvent for those who wish to argue that in its inception the League was a clever scheme for perpetuating Allied domination, and for those who claim that the element of sanctions and other super-State tendencies in the Covenant were imposed by thought alien to Anglo-Saxon traditions.

Moreover, it was during this preliminary stage of "conversations" between the English and American delegations that the inclusion of the Covenant in the Treaty of Peace was definitely decided upon. On January 25, 1919 the second plenary session of the Peace Conference passed without opposition a resolution demanding the establishment of the League "as an integral part of the general Treaty of Peace."<sup>3</sup> This resolution, prepared by Lord Robert Cecil after consultation with President Wilson, and indorsed by the Council of Ten, had results beyond the immediate appointment of the committee which framed the Covenant around the principles already accepted in the Anglo-American negotiations. It also

<sup>2</sup> On Jan. 27, 1919 when the foundations of the eventual Covenant were already far advanced, Colonel House wrote a letter to President Wilson, showing how grateful were the representatives of some of the smaller neutrals for the least crumbs of consideration thrown to them from the tables of the leading negotiators:

"President Ador of Switzerland called yesterday. He was much concerned about the neutral governments not being represented upon the League of Nations. . . . I suggested that the Great Powers might be willing to confer with neutral representatives unofficially and ask them to make any suggestions or criticisms as the formation of the League progressed. He was entirely satisfied with this." Quoted in Seymour, Vol. IV, p. 295.

<sup>3</sup> The text is given on p. 80 below. See also Seymour, Vol. IV, pp. 289 ff.



insured that the League would be launched with the Peace Treaty, instead of being stranded on the sands of inaction—as almost certainly would have been the outcome had the opportunity to take this tide in the affairs of men at flood been missed.

Not in any philosophic contribution to the content of the Covenant, but in his practical action to assure the establishment of "a league," is found the justification for the praise allotted President Wilson as its *fondateur*, as he is called on the memorial tablet erected to his memory by the city of Geneva outside the original League Building. In this work Mr. Wilson, strongly opposed by Secretary Lansing within his own delegation, found his essential support from Lord Robert Cecil of the British delegation. The credit, or the blame, of linking the Covenant to the Peace Treaty goes to these two men. The union has naturally made the League a target for attacks levelled at the punitive terms of the Treaty. But without that union there would in all probability have been no League to be a target of criticism.

As examination of the early Paris drafts for the Covenant will reveal, the identification of British and American ideas on the constitutional organization of the League was in itself no easy task. It has been pointed out that there was, between these two schools of league thought, no fundamental difference on the issue of sanctions. Before the Peace Conference assembled, the leaders of both the American and British delegations were on record as favoring the principle of united action, military if necessary, to terminate and punish any aggressive action in violation of the undertakings of the Covenant. Connected with the matter of sanctions, however, was the question of "the freedom of the seas," where the viewpoint of the two English-speaking nations was by no means identical. There was also pronounced opposition between the two delegations, particularly between Presi-

dent Wilson and the Premiers of Australia, New Zealand, and South Africa (in order of vehemence), on the desirability of the proposed mandates system as contrasted with outright annexation of the German colonies.<sup>4</sup> And on many questions of organization differences going deeper than detail had to be reconciled. The only certain way to ascertain what was gained, and what lost, in the process of harmonization is to follow in chronological order the American and British draft covenants prepared at Paris prior to the sessions of the formal Peace Conference Commission on the League.

#### WILSON'S SECOND DRAFT

On December 14, 1918 Woodrow Wilson arrived in Paris, whither Colonel House had been sent two months earlier as his "personal representative" on the Supreme War Council. On January 10, 1919, after a whirl of conferences with the Allied leaders and brief visits to England and Italy, the President completed his second draft covenant, the first of a series of three produced by him in Paris in little over three weeks. Because the draft which he had written in Washington the preceding summer had been kept confidential, whereas this first Paris draft was printed and circulated, it became erroneously known as Wilson's original draft of the Covenant, was so cited by Secretary of State Lansing in his book on *The Peace Negotiations*, and as such was later presented to the United States Senate.

In retrospect Wilson's second draft appears as an exceedingly imperfect document, and was indeed recognized as such contemporaneously by his own advisers.<sup>5</sup>

<sup>4</sup> At one time, "the whole project seemed in danger of splitting on the rock of South African and Australian nationalism." Quoted by Harold Temperley in *A History of the Peace Conference at Paris*, Vol. II, p. 26.

<sup>5</sup> This draft covenant, wrote David Hunter Miller at the time, "has been read with the deepest disappointment. The fact that it is largely drawn from British sources is no point against it, but rather the fact that it adopts, unconsciously no doubt, the British Empire point of view which

From the constitutional viewpoint its most serious weakness was, on the one hand, the omission of any provision for compulsory arbitration, which the first draft had included, while on the other hand the sanctions provisions were tightened along the lines laid down by General Smuts. Since the President's first Paris draft made no provision for a world court, and failed to establish the test of compulsory arbitration, it would have placed wide discretion as to application of the tremendous weapon of sanctions in the hands of an essentially political and probably partisan body, the Council of the League.

In the composition of this Council Wilson now followed the Smuts suggestion for permanent representation of the Great Powers, together with a minority representation of other States drawn in annual rotation from two panels of intermediate and minor Powers. And as three negative votes in the Council would have been necessary to act as a veto,<sup>6</sup> the decision as to an aggressor, and the power to throw the massed strength of the League against such a presumed aggressor as a moral act, could theoretically be taken over the opposition of any two permanent Council members. Beyond this, Article VI of this draft provided for an *ipso facto* war, derogatory of the constitutional power of the United States Congress to declare war, and extended the applicability of sanctions to non-member States. As an instance of the extreme development which an American president was willing to give

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looks for protection by the United States against the future without a thought of changing or improving the past." For full text of this contemporary comment, see David Hunter Miller, *The Drafting of the Covenant*, Vol. I, pp. 45-48. Compare also Robert Lansing, *The Peace Negotiations*, Chap. VI, which opens with the comment, regarding Wilson's second draft, that: "The more I studied the document, the less I liked it."

<sup>6</sup>Article II of Wilson's second draft. The text is found in Miller, Vol. II, Document 7. It will be noticed that this plan contemplated Council action by a two-thirds majority, instead of the unanimity rule eventually adopted. Such provision either would have compelled Japanese submission to Council authority, or would have defined Japan as an outright violator of the Covenant, in the case noted on p. 11 above.

to the doctrine of sanctions, the first paragraph of this article merits quotation:

Should any Contracting Power break or disregard its covenants under Article V, it shall thereby *ipso facto* commit an act of war with all the members of the League, which shall immediately subject it to a complete economic and financial boycott, including the severance of all trade or financial relations, the prohibition of all intercourse between their subjects and the subjects of the covenant-breaking State, and the prevention, so far as possible, of all financial, commercial, or personal intercourse between the subjects of the covenant-breaking State and the subjects of any other State, whether a member of the League of Nations or not.

President Wilson's willingness to put almost unlimited authority in the hands of a small group of Powers—a willingness which went so far as to envisage the establishment of an international army<sup>7</sup>—resulted first in causing acute anxiety to his advisers, and later in giving substantial arguments to the forces opposed to American membership in the League. In another field, however, Wilson's second draft had pronounced constructive influence on the evolution of the final Covenant. This is found in his development of the mandates provisions of the Smuts plan, to which four of the six "Supplementary Agreements" appended by Wilson to his second draft were devoted. These "Supplementary Agreements" were in effect definite articles of this draft covenant, and the fact that they were not so numbered was probably largely due to Mr. Wilson's curious attachment to the number thirteen. His first draft covenant had had thirteen articles, and when all the material for the second could not be conveniently crammed into that number, it was added

<sup>7</sup> Article IV of Wilson's second draft provided for the abolition of conscription among the Contracting Powers and agreement "that their future forces of defence *and of international action* [writer's italics] shall consist of militia or volunteers."

as "supplementary" to the thirteen numbered sections.<sup>8</sup>

The revisions made by President Wilson in the Smuts plan for mandates were radical and of far-reaching nature. In the first place he ignored the South African leader's suggestion that the system should be applied to former Russian territory, and, conversely, applied it to "the colonies formerly under the dominion of the German Empire," which Smuts had defined as being "inhabited by barbarians, who not only cannot possibly govern themselves, but to whom it would be impracticable to apply any idea of political self-determination in the European sense."

In the second place, President Wilson stipulated that in the mandated areas, "the League of Nations shall be regarded as the residuary trustee with sovereign right of ultimate disposal or of continued administration. . . ."

Thirdly, this draft covenant expressly forbade "any annexation of any of these territories by any State either within the League or outside of it."

Finally, the President maintained that the "Open Door" policy should be observed in all the mandated areas; that in granting mandates the "complete power of supervision and of intimate control" should be reserved to the League; and that the right of appeal to the League against any breach of the mandate, "or for the substitution of some other State or agency as mandatory," should be safeguarded for the native populations. While President Wilson rather overreached the mark by proposing that the mandates system should be applied to ceded territories of Austria-Hungary and Turkey proper, as well as to the predominantly Arab dominions of the latter and to the German colonies, his development of General

<sup>8</sup> For further evidence on this Wilsonian superstition, characteristically in opposition to ordinary accepted opinion on the number thirteen, see William Allen White, *Woodrow Wilson*, p. 469. The final Covenant had twenty-six, or twice thirteen, articles.

Smuts' thesis on mandates proved of great significance, and was largely adopted in the final Covenant.

In other respects there was little that was novel in Wilson's second draft covenant. It contained (Article III) a guarantee clause for the "political independence and territorial integrity" of League members, which led David Hunter Miller to assert that "Such an agreement would destroy the Monroe Doctrine," thus preparing the way for the later express recognition of the validity of that doctrine in what became Article 21 of the final Covenant.<sup>9</sup> The second Wilson draft, however, followed the previous lead of Colonel House in envisaging future territorial readjustments as an offset to territorial guarantee. The House proposals were also followed in the stipulation for "the reduction of national armaments to the lowest point consistent with domestic safety," and for the abolition of munitions manufacture for private profit. The draft tended to strengthen the authority of the Council *vis-à-vis* the Assembly, as compared with the position taken on this point by Mr. Wilson in the summer of 1918. And by referring (Article V) to "the Executive Council of the Body of Delegates" it made clear that the relationship visualized between the two bodies was in no sense one of a bicameral parliament.

The fifth and sixth "Supplementary Agreements," following those in which Mr. Wilson outlined his ideas for the establishment of the mandates system, were both destined for development as important parts of League activity. The first of these demanded that League members should "agree that they will themselves seek to establish and maintain fair hours and humane conditions of labor for all those within their several jurisdictions who are engaged in manual labor." This, in essentials, was eventually incorporated in Article 23(a) of the final Covenant, providing the organic connection whereby the

<sup>9</sup> See Miller, Vol. II, pp. 70-72.

International Labor Organization became technically subordinate to the League.

The last "Supplementary Agreement" was an expansion of General Smuts' ideas for the protection of racial minorities, and foreshadowed both the subsequent Minorities Treaties framed by the Peace Conference Committee on New States, and, as a consequence, the present minorities work of the League. This draft agreement read:

The League of Nations shall require all new States to bind themselves as a condition precedent to their recognition as independent or autonomous States, to accord to all racial or national minorities within their several jurisdictions exactly the same treatment and security, both in law and in fact, that is accorded the racial or national majority of their people.

#### WILSON'S THIRD DRAFT

Although the imperfections in President Wilson's first Paris draft for the Covenant served as a basis for much of the Senate's subsequent hostility, the document did not, as a matter of fact, remain two weeks in its original form. Suggestions by General Bliss, Colonel House, Secretary Lansing, and Mr. David Hunter Miller resulted in a number of immediate changes in the draft of January 10, 1919, these being incorporated in the President's third draft covenant (his second Paris draft), which was completed on January 20. While this draft was no more final than its immediate predecessor, it was more carefully thought out, and made some further direct contribution to the eventual Covenant. As in his previous effort, the definitive articles of this draft were confined to the number of thirteen, but four new "Supplementary Agreements" were now added, making ten in all. This total of twenty-three was not numerically very different from the twenty-six articles of the League's Covenant as eventually adopted.<sup>10</sup>

<sup>10</sup> The text of Wilson's third draft covenant is Document 9 in Miller, Vol. II.

An insertion made in the preamble of Wilson's third draft, which seems to have aroused little or no contemporary comment, has proved of very great constitutional importance to the League. This is the clause stating that it is, among other reasons, "in order to promote international co-operation" that the signatory Powers agree to the Covenant. Introduced as a sort of afterthought into the body of the preamble of Wilson's third draft, this clause was later placed at the very beginning of the Covenant on instigation of Lord Robert Cecil. By blanket indorsement it has served to give constitutional validity to all League undertakings for which specific authorization cannot be found elsewhere. As Sir Eric Drummond once told the present writer this clause has, on more than one occasion, "proved very useful."

In Wilson's third draft covenant the powers of the Council, which his second draft in its turn had increased over the first, were still further augmented at the expense of the Assembly, or "Body of Delegates" as it was called at this time. One of the most striking of these changes was made by the omission of a single word. Article II of Wilson's second draft had stipulated that: "All actions of the Body of Delegates taken in the exercise of the functions and powers granted to them under this Covenant shall be first formulated and agreed upon by an Executive Council. . . ." This language would seem to have provided a sufficiently drastic subordination of the Assembly, but by omitting the adverb "first" the third draft emphasized the futile position deemed desirable for the more representative body. It was not enough that the scope of the Assembly should be limited to policies mapped out by the Council. Mr. Wilson, at Paris, was willing that the Assembly should be merely a rubber stamp for the Council.

Moreover, the third draft would have transferred from Assembly to Council the important function of making



recommendations to League members, which in the course of the League's development has become as much an Assembly as a Council prerogative. This change in the phraseology of the third paragraph of Article II of the two drafts was as follows:

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In spite of opposition from his advisers, particularly Secretary Lansing, President Wilson refused to eliminate the affirmative guarantee clause which was the essential part of Article III in both his second and third draft.<sup>11</sup> In the latter document it read: "The Contracting Powers unite in guaranteeing to each other political independence and territorial integrity, *as against external aggression*," the words italicized having been added to the earlier draft. And in virtually these words the guarantee clause came through to form the famous Article 10 of the final Covenant. This addition, however, was only a change of clarification<sup>12</sup> and in no sense an adoption of Mr. Lansing's proposal for a negative guarantee or "self-denying covenant," the sense of which was nearly a decade later incorporated in the Pact of Paris. The Lansing proposal, embodied in a memorandum sent to the President in a

<sup>11</sup> The strong feeling engendered in the American delegation by the dispute over the affirmative guarantee is noted in Lansing, Chap. X.

<sup>12</sup> This clarification was suggested by General Bliss. See Miller, Vol. II, p. 94.

letter dated December 23, 1918, had suggested "a guarantee against one's own acts, instead of a guarantee against the acts of another." Textually, it provided: "Each Power signatory or adherent hereto severally covenants and guarantees that it will not violate the territorial integrity or impair the political sovereignty of any other Power signatory or adherent to this convention. . . ."

President Wilson was thus resolute in his refusal to eliminate the clause of affirmative guarantee, which since the outbreak of the World War had seemed to him a necessity for the preservation of peace, and on which he later summarized his viewpoint by telling the Senate reservationists that "Article 10 seems to me to constitute the very backbone of the whole Covenant. Without it the League would be hardly more than an influential debating society."<sup>13</sup> This attitude on the part of the President was momentous, for the insertion of the affirmative guarantee in Article 10 provided the basis and justification for the doctrine of sanctions embodied in Articles 16 and 17. With only a "self-denying ordinance," as advocated at Paris by Secretary Lansing, the Covenant, in its peace-preservation aspects, would probably have evolved as a moral instrument, akin to the Pact of Paris. The decision taken called for the creation of articulated international machinery capable, in theory at least, of throwing the whole power of the League against a transgressor nation. It was a decision which throughout received the strongest French indorsement. And the possibility that this machinery, when created, would be too explosive to be put into operation was not anticipated by the principal delegates during this period when American abstention from League membership was a disregarded contingency.

<sup>13</sup> Statement made at the White House, Aug. 19, 1919 in conference with the Senate Foreign Relations Committee.

While President Wilson stuck to his guns on the issue of the guarantee clause, he accepted the counsel of his advisers in certain matters subordinate thereto. His second draft, following the wording of Phillimore and Smuts, had provided for an *ipso facto* war against a Covenant-breaking State by League members. This was amended in his third draft to conform with the provision of the United States Constitution that only Congress has the power to declare war. The salient change in Article VI of the two drafts, together with the final wording as adopted at the beginning of Article 16 of the final Covenant, may be compared:

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Should any Contracting Power break or disregard its covenants under Article V, it shall thereby <i>ipso facto</i> become at war with all the members of the League. . . .	Should any Contracting Power break or disregard its covenants under Article V, it shall thereby <i>ipso facto</i> be deemed to have committed an act of war against all the members of the League. . . .	Should any member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall <i>ipso facto</i> be deemed to have committed an act of war against all other members of the League. . . .

In his third draft Mr. Wilson also sought to reconcile his simultaneous support of a League blockade and of the doctrine of "freedom of the seas." To escape the seeming paradox he introduced a new "Supplementary Agreement," reading:

The rights of belligerents on the high seas outside territorial waters having been defined by international convention, it is hereby agreed and declared as a fundamental covenant that no Power or combination of Powers shall have a right to overstep in any particular the clear meaning of the definitions thus established; but that it shall be the right of the League of Nations from time to time and on special occasion to close the seas in whole or in part against a particular Power or particular Powers for the purpose of enforcing the international covenants here entered into.

Of the four new "Supplementary Agreements" in Wilson's third draft two were completely omitted from the final Covenant, one of these being that quoted above and the other being the provision against religious discrimination in the member States. On the other hand, two of the new "Supplementary Agreements" found their way in modified form into the League's Constitution as eventually evolved. These were the provision for the publication of all treaties concluded by members of the League (now Article 18), and the provision against discrimination in commercial and financial dealings, which is considerably watered down in Article 23 (e) of the final Covenant, but applied more strongly in the case of certain mandated areas by the last clause of Article 22 (5).

The third draft also expanded and modified the mandates clauses of its predecessor, specifying that:

The object of all such tutelary oversight and administration on the part of the League of Nations shall be to build up in as short a time as possible out of the people or territory under its guardianship a political unit which can take charge of its own affairs, determine its own connections, and choose its own policies. The League may at any time release such a people or territory from tutelage and consent to its being set up as an independent unit . . .

President Wilson's third draft marked the apex of his preliminary workmanship on the League Covenant. While, two weeks later, he prepared a fourth and final draft, this was not used as the basis of the detailed formulation entrusted to the Peace Conference Commission on the League. Many of the ideas and a good deal of the actual language of the third draft were incorporated into the eventual Covenant, but as the basic foundation for the League's Constitution it was unsatisfactory. There was no provision for a world court, the arbitration system proposed was confused and clumsy, and there was

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serious lack of definition and clarity in the parts pertaining to the actual organization of the League.

#### THE OFFICIAL BRITISH DRAFT

While members of the American delegation were working on the revision of President Wilson's second draft covenant—his first Paris draft—the League of Nations section of the British delegation was equally busy expanding the draft sketch which Lord Robert Cecil had circulated to that country's War Cabinet a month earlier, a summary of which was given at the close of the preceding chapter. On January 20, 1919, the first official British draft was brought out, being largely the work of Mr. Cecil Hurst. It was prepared after consideration of Wilson's ideas and (as Professor Seymour notes) was sufficiently akin to the American design "to make possible the close co-operation of the British and American experts in the drafting of the Covenant by the Peace Conference itself."<sup>14</sup> Clauses which clearly showed Wilson's influence were those embodying a guarantee of territorial integrity against foreign aggression and those providing that the League "may recommend to the parties affected any modification which it may think necessary" in the territorial settlements so guaranteed.<sup>15</sup> In view of later developments it is noteworthy that the Anglo-Saxon position at this time strongly favored giving the League the right to reconsider treaties proven by the passage of time to be inequitable, a thesis which was much attenuated before finding its way into Article 19 of the final Covenant.

Although the British and American draft covenants had now been brought to a stage where their amalgamation could be foreseen, they were by no means uniform. On the one hand the British draft foresaw the establish-

<sup>14</sup> Seymour, Vol. IV, p. 288.

<sup>15</sup> The text of this British draft is Document 10 in Miller, Vol. II.

ment of a "permanent court of international justice," of the need for which Mr. Wilson was not yet convinced. On the other hand the British draft was careful not to indorse the establishment of the mandates system, to which both the Australian and New Zealand governments were at this time outspokenly hostile. There were also underlying differences on particulars concerning the organization of the League.

In the first place, the British draft went with considerable detail into a vital field which the American architects of the Covenant, with the exception of a passing reference in the plan of Colonel House, had very largely overlooked. This was the establishment of the League's Secretariat. So directly are Articles 6 and 7 of the present Covenant, dealing with this subject, the outgrowth of the British recommendations that the salient articles of the document (Chapter I, paragraphs 9-15) from which they sprang are quoted here.

9. There shall be established a permanent international Secretariat of the League. The Secretariat shall be under the general control and direction of the Chancellor of the League, who shall hold office during the pleasure of the Council. The first Chancellor of the League shall be the person named in the protocol hereto. Any successor shall be appointed by the Council.

10. The Chancellor of the League shall be assisted by such number of assistant secretaries as he may find it necessary to appoint and such further staff as he may think necessary within the limits of the expenditure which may be authorized.

11. The Chancellor shall act as the Secretary of the Conference of the League and of the Council of the League, and will be responsible to them for such duties as may be entrusted to him.

12. Representatives of the States members of the League attending meetings of the League, the representatives of the High Contracting Parties at the capital of the League, the Chancellor and the members of the permanent Secretariat of the League, and the members of any judicial or administrative organ or of any commission of enquiry working under the



sanction of the League, shall enjoy diplomatic privileges and immunities while they are engaged in the business of the League.

All buildings occupied by the League, or by any organization placed under the control of the League, or by any of its officials, or by the representatives of the High Contracting Parties at the capital of the League shall enjoy the benefits of extra-territoriality.

13. The Secretariat of the League shall be established at . . . . . The city shall constitute the capital of the League.

The meetings of the Conference of the League and of the Council of the League shall be held at the capital of the League, or in such other place as may be determined.

14. Each of the High Contracting Parties may maintain a representative at the capital of the League.

15. The expenses of the League, other than those occasioned by meetings of the Council of the League, shall be borne by the States members of the League, in accordance with the distribution among the members of the Postal Union of the expenses of the International Postal Bureau. The expenses occasioned by meetings of the Council of the League shall be divided equally among the States represented on the Council.

This British draft, moreover, was instrumental in determining the characteristics of the Secretariat in addition to the legal basis for its institution. A note to Chapter I, paragraph 11 (quoted above) of the draft, while never incorporated in the Covenant or otherwise given legal sanction, foreshadowed with extraordinary accuracy not merely the privileged position of nationals of States members of the Council in the directorate of the Secretariat, but even the national composition of all the executive positions, as well as the present unwritten rule that no appointment shall be made to the Secretariat in the case of a national who is not *persona grata* with the government of his country. This interesting footnote read:

It might be well to agree in a protocol that the Council shall, in the first instance, direct the Chancellor to select the Secretariat in a particular way. Such a protocol, signed by the States composing the Council, might stipulate that the

Chancellor shall appoint ten permanent secretaries at his discretion, subject to the following provisions:

He shall choose one national of each of the States members of the Council, two nationals of two European States not members of the Council, one national of one of the States of America other than the United States, and two nationals of any States members of the League at his discretion. Before appointing a national of any State, the Chancellor ought, however, to secure the approval of the government of such State, and the Council should have the right to veto any given appointment by unanimous vote.

While the subject of the composition of the Secretariat will be treated in detail in a later chapter, it may be noted here that the first appointments to executive positions in that body exactly followed the precise provisions laid down in this British draft, which assumed that Council membership would be limited to the five Great Powers. In addition to Drummond (British) as secretary-general there were an Italian (Anzilotti), an American (Fosdick), a Frenchman (Monnet), and a Japanese (Nitobé) as under-secretaries, and as the first six directors of sections a Norwegian (Colban), an Englishman (Salter), a Canadian (Ames), a Dutchman (Van Hamel), and two Frenchmen (Comert and Mantoux). This list closely corresponds with the stipulations quoted above, even though the "two nationals of any States members of the League" chosen at the discretion of the Secretary-General were at the outset both French.

Another of the articles from the British draft, as quoted above, has proved of enduring importance although never incorporated into the Covenant. This is the provision that: "Each of the High Contracting Powers may maintain a representative at the capital of the League."

Once the League became firmly established at Geneva the practise arose on the part of many nations—and has steadily tended to increase—of maintaining there permanent delegations charged with reporting on League activi-

ties to their respective Foreign Offices, thus providing channels of communication between their governments and the League. To some extent they may even try to influence League policy whenever such action can be taken quietly and without publicity. An outstanding step in this movement was the decision of the United States Department of State to have as its chief Consul at Geneva a man who should have nothing to do with ordinary consular duties, but who should be in effect if not in name the official American observer at the League. This development was formally put into effect when Mr. Elbridge Rand came from strictly diplomatic activities to assume the role of United States Consul at Geneva in August 1928. And the trend was strengthened two years later when Mr. Prentiss Gilbert, destined to become famous during the Manchurian dispute as the first American to sit with the League Council, was transferred from his position as assistant chief of the Western European Division of the Department of State to succeed Mr. Rand. The activities of League "observers," whether from member or non-member States,<sup>18</sup> were clearly foreshadowed in the British draft covenant of January 20, 1919, even though the final Covenant itself kept silent on the subject.

In addition to adumbrating the future functions of the Secretariat the British draft entrusted to the Chancellor (who later became the Secretary-General) of the League, powers which accord closely with those eventually granted that official. In the chapter of this draft entitled "Avoidance of War" the Chancellor was given responsibilities regarding the securing of statements from nations in dispute, the publication of these, the temporary regulation of procedure in international controversies and the convocation of emergency meetings of League organs, which, in modified form, were eventually embodied in

<sup>18</sup> See pp. 272-73 below.

Articles 11(1) and 15(1-2) of the Covenant. In a note to Chapter I, paragraph 10, of the British draft the "duties of the Chancellor" were, moreover, outlined, with what the event has shown to be accurate forecast:

The duties of the Chancellor should be somewhat as follows, and directions to that effect might be given to him by the States composing the Council in a protocol:

(a) He should convene the meetings of the Conference and the Council, prepare the work of these meetings, and record the business transacted at them.

(b) He should facilitate and register the results of the work of the various international organs indicated in the note to Chapter I, and, in this connection, he should carry out the provisions of Chapter I, Article 1(2) of the Convention.

(c) He should take the action required of him in connection with international disputes, as provided in Chapter II.

(d) He should register all international treaties brought to the cognisance of the League.

(e) In general, he should collect, for the information of the Council and the Conference, all facts affecting the purposes and obligations of the League.

(f) The Conference and Council of the League should correspond through him, as the sole responsible channel, with the member States, with the international bodies indicated under (b), and with any court of international law or conciliation operating in pursuance of this Convention.

(g) He should maintain current relations at the capital of the League with any official representatives whom the member States may accredit to the League.

(h) He should, at the request of two or more member States, make arrangements for any official inter-State meetings which it may be desired to hold.

(i) He should make similar arrangements for any unofficial meetings of an international character which he, as the representative of the Council, may consider it advisable to invite to the capital of the League.

So far as the organization and powers of the Secretariat are concerned, therefore, this British draft covenant proved a document of very great influence, indeed the determining factor in actual development. It also paved the way for the establishment of the Permanent Court

of International Justice, as provided in Article 14 of the final Covenant. But in its conception of the League's Council and Assembly the British plan was eventually unavailing, largely because of Lord Robert Cecil's insistence that all authority should rest in the hands of the Great Powers.<sup>17</sup> The British draft covenant reiterated the stipulation of the earlier Cecil plan for a Council limited to France, Great Britain, Italy, Japan, and the United States, though it might "at any time co-opt additional members." And, as Cecil had before provided, this Council should hold meetings "from time to time as occasion may require, and in any case at intervals of not more than one year." The General Conference (Assembly) "composed of responsible representatives of the States members of the League," was to be similarly subject to special call, but the provision that it should be held at least every four years indicates how little practical action was expected from it. The power and prestige which the Assembly has come to exercise in the League organization was never anticipated by the British architects of the Covenant, even though that country's representatives were quick to forward the trend, once started.

Except for the introduction of provision for a permanent court of international justice, which, it was intimated, should eventually be entrusted with power to give advisory opinions on cases pending before the League,<sup>18</sup> the "Avoidance of War" clauses of the British draft continued to follow the design of the Phillimore plan for an enforced submission and investigation, by either Council or General Conference, of "any dispute likely to lead to a rupture." For any breach of the provisions to this end rigorous sanctions were made applicable, including an *ipso facto* war clause and the drastic provision that naval,

<sup>17</sup> "He thought that the Great Powers must run the League and that it was just as well to recognize it flatly as not." Miller, Vol. I, p. 53.

<sup>18</sup> Compare Miller, Vol. I, p. 52.

military, and economic operations undertaken against a Covenant-breaking State

... shall be carried out without regard to any limitations hitherto imposed on belligerent States by any convention or rule of international law.

Two other features of this British draft demand notice. One was the provision that the British dominions, including India, should be accorded separate representation in the General Conference and also at the Council when matters affecting these countries "are under discussion." It was this stipulation which first raised the demand that national representation in the Council and Assembly should not be of a purely diplomatic character, since the British overseas territories at this time possessed no separate diplomatic services. The other, and very extraordinary feature, was a note on League membership suggesting that invitations to join should be withheld from:

... Mexico, Haiti, Santo Domingo and any other [Latin American] State which, in the opinion of the United States, may be considered unready for membership. . . .

This provision, with the later insertion of the Monroe Doctrine clause in what is now Article 21 of the Covenant, will come up for discussion later. It was destined to have considerable influence in creating a hostile Latin American attitude towards the League, and particularly in delaying the entrance of Mexico until the Assembly of 1931. At this point it may be considered as evidence of the undoubted intention, underlying the British draft covenant, that "the Great Powers must run the League" regardless of the feelings of the less powerful States.

Draft covenants acceptable to President Wilson and his advisers for the United States, and to Premier Lloyd George and his advisers for Great Britain, had now been interchanged and made the subject of careful study by the two delegations. The next step was to amalgamate

the American and British drafts into a single document, approved by both delegations, and utilizable as the basis of discussions by the Peace Conference Committee of the League.

In addition to this, however, there had, from the beginning of the Paris negotiations, been two other problems of at least equal magnitude. The one was to secure the inclusion of the Covenant, as eventually adopted, in the general Treaty of Peace, so as to make certain that the League would be actually established thereby. This, as has been noted, was achieved by resolution of the Peace Conference on January 25. The other problem was to insure that the Anglo-American draft covenant, once decided upon, would meet the general approval of the other national delegations at Paris. Before formal Anglo-American accord was achieved the leaders of these two delegations were working on the spokesmen of other countries to this end, as shown by the following interesting extract from the diary of Colonel House, under date of January 30, 1919:

Lord Robert Cecil was my most important visitor. We went over the Covenant for the League of Nations and there was but little disagreement between us. He agrees with our views more than he dares admit, because he sees that his people will not follow him. I am to get Orlando [Italy] in line and he is to get the French, and when this is done we will have a general meeting [of the Peace Conference Committee on the League].<sup>19</sup>

#### LORD EUSTACE PERCY'S AMALGAMATION

The first attempt to reconcile British and American divergences in a single text was the amalgamation made by Lord Eustace Percy of the British draft and a number of the provisions of President Wilson's second Paris draft. This official British suggestion was sent to the American

<sup>19</sup> Quoted in Seymour, Vol. IV, pp. 298-99.

delegation on January 25, the day the Peace Conference decided to put the Covenant in the Treaty.

The document, as was to be expected under the circumstances, contributed little to the constitutional development of the League.<sup>20</sup> It started off with the Wilson preamble and from that point gave a suggested fusion of the British and American drafts, making certain omissions, revisions, and additions. Of the latter the most interesting was that which introduced a famous clause from the American Declaration of Independence and, in the same paragraph, developed the idea of solidarity in the world community in stronger language than the Wilsonian thesis that "the peace of the world is superior in importance to every question of political jurisdiction or boundary." This paragraph from the Percy plan, which followed the provision that the League should have authority to recommend modification of the peace treaty settlements, deserves quotation:

In considering any such modification the League shall take into account changes in the present conditions and aspirations of peoples or present social and political relations, pursuant to the principle that governments derive their just powers from the consent of the governed, and shall be guided by the principle, which the High Contracting Powers accept without reservation, that the growth among all peoples of a sense of their duties as members of a corporate society is superior in importance to every question of political predominance or historical claims.

One innovation in the Percy plan came through to be embodied in the final Covenant, as Article 12 (2). This was the provision that in an issue submitted to inquiry by the League's Council a decision should be handed down by that body "within six months." The previous British draft had left the time limit unstipulated.

<sup>20</sup> The amalgamation of the American and British drafts as suggested by Lord Eustace Percy is Document 11 in Miller, Vol. II.



Comments in the Percy memorandum foreshadowed the Permanent Disarmament Commission established under Article 9 of the eventual Covenant. They expressed doubt as to the advisability of putting the supervision of the contemplated Minorities Treaties under League control. And they opposed President Wilson's "Supplementary Agreement" on "freedom of the seas" on the ground that this visualized future private war whereas the Covenant was being designed to eliminate wars "outside those contracted on behalf of the League of Nations."

For Wilson's clauses regarding mandates Lord Eustace Percy suggested the substitution of a supplementary British draft<sup>21</sup> which also reached the American delegation on January 25, together with a delightfully realistic covering note, saying:

It may possibly be desirable to amend the annexed draft convention regarding mandatories in the direction of adding some general declarations agreeable to American and to international labor sentiment.

The British draft covenant had now been remodeled by the incorporation of a number of President Wilson's provisions. The next logical step was to incorporate in the last existing American draft (Wilson's second Paris draft) such of the British suggestions as would seem acceptable to the President and to American opinion. This was done by Mr. David Hunter Miller, who then, on January 27, conferred at length with Lord Robert Cecil to find a form of this Anglo-American covenant which would be acceptable to both parties. In the words of Mr. Miller, this meeting resulted in

a substantial agreement, except on certain questions which were reserved, these being particularly the paragraphs relating

<sup>21</sup> For text of this British "Draft Convention Regarding Mandates" see Miller, Vol. I, pp. 106-08.

to the procedure for appeal from an arbitration, mandates, freedom of the seas and economic equality.<sup>22</sup>

#### THE FIRST ANGLO-AMERICAN DRAFT

This document, in spite of what Lord Robert Cecil called "the very artificial character of its drafting," was approved by him in substance with the remark that "it should form the basis of our discussion with our Allies."<sup>23</sup> And as such it proved to be, after material pruning and revision; the Cecil-Miller draft must be regarded as of very considerable importance among the long series of preliminary covenants.<sup>24</sup>

Indeed, it may be asserted that of all the conferences and parleys which went to the making of the League's Covenant, none was more momentous than this meeting of over four hours between Lord Robert Cecil and Mr. David Hunter Miller on January 27, 1919. The Cecil-Miller conference, it should be noted, was not one between men of equal standing in their respective delegations. For the British, Cecil was practically in charge of League matters, to which Premier Lloyd George gave comparatively little personal attention. For the American delegation, Miller was the legal adviser, but essentially subordinate in position to both President Wilson and Colonel House. However, the changes to which Miller agreed first with Lord Robert Cecil, and later with Mr. Cecil Hurst, the British legal adviser, were the final changes in the document used by the Peace Conference Commission on the League as the basis of its work. Mr. Wilson himself was displeased by many of the changes, but they stood. He had declared that he did not intend to have lawyers drafting the Covenant.<sup>25</sup> They drafted it, in many essentials, none the less.

<sup>22</sup> Quoted in Miller, Vol. I, p. 55.

<sup>23</sup> Letter from Cecil to Miller, quoted in Miller, Vol. I, p. 61.

<sup>24</sup> The Cecil-Miller draft is Document 12 in Miller, Vol. II.

<sup>25</sup> Compare Lansing, pp. 107 and 200.

In order to facilitate League membership on the part of the British dominions and India the Cecil-Miller draft definitely dropped the Wilsonian provision that the Body of Delegates (Assembly) "shall consist of the Ambassadors and Ministers of the Contracting Powers accredited to \_\_\_\_\_ and the Minister for Foreign Affairs of \_\_\_\_\_." In its place was substituted the wording that: "The High Contracting Parties may appoint representatives at the capital of the League and the Body of Delegates shall normally consist of such representatives."

As the League has evolved, the permanent representatives stationed at Geneva by many governments are almost never the leading delegates of these countries in the respective Assembly delegations, although they frequently fill advisory or subordinate posts in the delegations. But at this stage of the drafting of the Covenant it was considered appropriate and desirable first, that there should be permanent national representatives, of the diplomatic type, stationed at Geneva, and second, that these should be the Assembly delegates. When the United States government, in 1928, started sending diplomatic officers to fill the post of permanent observer at Geneva, it was merely fulfilling the first part of this provision in the Cecil-Miller draft.

This first approved Anglo-American draft also dropped the Smuts-Wilson plan for representation of the small Powers on the Council, significantly termed the "Executive Council" at this time. The membership thereof was to consist of France, the British Empire, Italy, Japan, and the United States. In earlier British drafts "Great Britain" had been named as a Council member. The substitution of "British Empire" coincided with the stipulation of separate League membership for the following British overseas territories: Australia, Canada, Newfoundland, South Africa, New Zealand, and India. It will be noted that at this time there was no attempt by

the British to urge a separate Irish membership, though Newfoundland was put forward as a territorial unit to be considered distinct from Canada. The case for separate membership on the part of Newfoundland was soon dropped, but the Irish Free State was elected by the Fourth Assembly, on September 10, 1923.

In behalf of the Assembly, Mr. Wilson's provision limiting the action of that body to approving recommendations of the Council was omitted from the Cecil-Miller draft, though this document continued to be extremely cautious in hedging the power of the Body of Delegates with restrictions.<sup>28</sup> At the same time the permissive language of Wilson's second Paris draft, authorizing the Assembly to discuss "any matter lying within the jurisdiction of the League of Nations as defined in this covenant," was altered so as to authorize Assembly discussion of "any matter lying within the *sphere of action* of the League of Nations as defined in this covenant." That change, which came to be embodied in Article 3(3) of the final Covenant, has been of very considerable practical significance, since the League's "sphere of action" can be said to be practically unlimited, while its "jurisdiction," on any legal interpretation, is severely confined. In the final Covenant, moreover, the qualifying phrase—"as defined in this Covenant"—was omitted.

Two distinctively British contributions in the Cecil-Miller draft were the articles numbered II-A and II-B. The first of these anticipated the important part which the Secretariat would play in the League organization, stipulating in its opening paragraph that: "The Chancellor of the League shall be assisted by such number of assistant secretaries as he may find it necessary to appoint and such further staff as he may think necessary within the limits of the expenditures which may be authorized by the Executive Council." The latter provision, inci-

<sup>28</sup> Compare Miller, Vol. I, p. 58.

dentally, shows that at this period the vesting of budgetary control with the Council was taken for granted. By 1930, as will be shown in Chapter XIII, the Assembly had assumed complete budgetary authority.

The second of these articles foreshadowed, perhaps more clearly than the final Covenant, the development of that technical work which has come to be so important a part of the League's activities. It read:

The Body of Delegates shall appoint commissions to study and report on economic, sanitary, and other similar problems of international concern, and the Body of Delegates shall recommend to the High Contracting Powers such action as these reports may show to be necessary or desirable.

Many of those who played a prominent role in the drafting of the Covenant had little idea of the practical measures which would eventuate from their work. As instance of this may be quoted the observation on the above article made by Mr. Miller in a contemporary report to Colonel House. "This article," he said, "is new but not important."<sup>27</sup> It may also be noted that the plan at this time was to have the Assembly, rather than the Council, appoint the League's technical committees.

It was in the Cecil-Miller draft, and as a result of the insistence of Lord Robert Cecil, that provision for the establishment of a world court, towards which President Wilson had been indifferent if not actually hostile, was definitely written into the now crystallizing Covenant. This was done by means of an insertion in the cumbersome arbitration provisions of Article V of Mr. Wilson's second Paris draft, criticized by his Secretary of State as follows:

That article, by depriving an arbitral award of finality and conferring the power of review on a political body [the

<sup>27</sup> The same. Mr. Miller, however, doubtless meant "not important" in the sense that the provision was unlikely to arouse serious opposition, the really important problem at this time being harmonization of controversial principles.

Council] with authority to order a rehearing, shows that the President believed that more complete justice would be rendered if the precepts and rules of international law were in a measure subordinated to political expediency and if the judges were not permitted to view the questions solely from the standpoint of legal justice.<sup>28</sup>

The insertion above referred to was placed at the beginning of the third paragraph of Article V of Wilson's second Paris draft, the new wording introduced through Cecil's instrumentality being italicized in the excerpt given below. It is apparent at a glance that the change had the effect of completely subordinating the elaborate arbitration provisions which for President Wilson had been a central part of the Covenant. And in the Covenant as finally adopted scarcely a trace remains of Wilson's designs in this direction. The significance of the alteration in the Cecil-Miller draft was the shift given in the League's formative period towards a legal rather than a political system for the settlement of international disputes. That was initiated by the following revision of Wilson's original plan:

*In case of arbitration, pending the creation of a permanent court of international justice and in the absence of provisions in any agreement between the parties to the dispute prescribing the constitution of the court to which the dispute shall be submitted, the matter or matters at issue shall be referred to three arbitrators, one of the three to be selected by each of the parties to the dispute, from outside their own nations, when there are but two such parties, and the third by the two thus selected. . . .*

Moreover, although their ideas were not then adopted, the British delegation had at this time worked out a fairly complete scheme for both the organization and the functions of the World Court, defined by Lord Robert Cecil as "the necessary basis of all legal development in

<sup>28</sup> Lansing, p. 132. His chapter on "International Arbitration" sharply attacks Mr. Wilson's seeming opposition to the development of a world court.

international relations."<sup>25</sup> It was not American, but British, leadership which insisted upon the development of this agency as an indispensable arm of the League.

The Cecil-Miller draft cleared up one of the outstanding issues between the American and British delegations by eliminating the *ipso facto* war clause, in the event of a breach of the peace preservation measures of the Covenant, from the British draft of January 20. In its place was substituted the wording of President Wilson's second Paris draft: ". . . it shall thereby *ipso facto* be deemed to have committed an act of war against all the members of the League . . .," this being virtually the language of the final Covenant, Article 16(1).

One other change of constitutional significance in this first accepted Anglo-American draft was the expansion, on British initiative, of President Wilson's passing reference to labor rights. The British revision introduced the germ of the present International Labor Organization, as may be seen by a comparison of the appropriate parts of the two texts:

#### WILSON'S THIRD DRAFT

The Powers signatory or adherent to this Covenant agree that they will themselves seek to establish and maintain fair hours and humane conditions of labor for all those within their several jurisdictions who are engaged in manual labor and that they will exert their influence in favor of the adoption and maintenance of a similar policy and like safeguards wher-

#### CECIL-MILLER DRAFT

The High Contracting Powers will work to establish and maintain fair hours and humane conditions of labour for all those within their several jurisdictions and they will exert their influence in favour of the adoption and maintenance of a similar policy and like safeguards wherever their industrial and commercial relations extend. Also they will appoint commis-

<sup>25</sup> Cecil's contemporary views on the organization of a permanent court of international justice, its utility as a final court of appeal from preliminary arbitral decisions, and its other possible functions, are quoted in Miller, Vol. I, pp. 62-64.

ever their industrial and commercial relations extend.

sions to study conditions of industry and labour in their international aspects and to make recommendations thereon, including the extension and improvement of existing conventions.

In spite of prolixity and artificialities of wording, the Cecil-Miller draft successfully brought the British and American delegations within sight of complete agreement, and therefore was a most important preliminary document in the long process of the drafting of the final Covenant. Lack of accord, however, still existed on various important issues, which in this draft were reserved for further discussion between the two delegations. These issues were: (1) Wilson's cumbersome provisions for procedure in the event of appeal from arbitration decisions; (2) the mandates provisions; (3) the provisions for protection of minorities; (4) the "fundamental covenant" for freedom of the seas except in the event of a League war; and (5) the provision for "no discrimination" in international commercial and financial dealings.

Barring harmonization of these issues, and stylistic improvements, the Covenant was, on January 27, 1919, ready for submission to the newly created League Commission of the Peace Conference.

#### MR. CECIL HURST'S REVISION

It was the purpose of the next draft covenant—a purpose which was successfully achieved—to secure the textual condensation and complete Anglo-American agreement which were essential preliminaries to incorporating the Constitution of the new international organization in the Treaty of Peace. Prior to the preparation of this draft President Wilson and Premier Orlando of Italy held a conference with the result of agreement to



drop from the Covenant the anti-conscription clause by which General Smuts had set such great store, and to exclude from the operation of the mandates system territory ceded by Austria-Hungary.<sup>30</sup> The actual authorization of what came to be known as the Hurst-Miller draft, which was the basis of discussion for the Peace Conference Commission on the League, was given at a meeting held on January 31, with President Wilson, Colonel House, and Mr. Miller present for the American delegation, and Lord Robert Cecil and General Smuts representing the British. In the words of Mr. Miller:

It was finally decided that I should meet Mr. Hurst, the British legal adviser, the next day and should, so far as possible, agree with him on a draft, referring to House and Cecil, representing respectively the American and British governments, any questions which might be impossible of adjustment.<sup>31</sup>

It does not appear, however, as was shown both by President Wilson's later attitude towards the Hurst-Miller draft and by the following extract from the contemporary diary of Colonel House, that either of the American principals anticipated such drastic changes to secure unity as were actually made by Messrs. Hurst and Miller. The italics in this extract from the diary of Colonel House for January 31, 1919 have been inserted to bring out this important point.

We had a most successful meeting in my rooms, consisting of the President, General Smuts, Lord Robert Cecil, and myself. David Miller was the only other person present. We discussed our difficulties regarding the League and brought them nearly to a vanishing point. We decided that Miller, representing us, and Hurst representing the British, *should*

<sup>30</sup> This conference, between Wilson and House, Orlando and Scialoja, was held on Jan. 30, 1919. See Miller, Vol. I, pp. 64-67 and Seymour, Vol. IV, p. 299.

<sup>31</sup> Miller, Vol. I, p. 67. Mr. Cecil James Barrington Hurst, legal adviser to the British Foreign Office, was later knighted and in 1929 was elected a judge of the Permanent Court of International Justice.

*draft a new form of covenant based upon the one which the President and I jointly prepared. . . . The President remained behind for a quarter of an hour in order to talk and felicitate with me over the successful outcome of the evening's conference.*<sup>32</sup>

In point of fact the basis of the Hurst-Miller draft was not any of President Wilson's three previous designs for the League Covenant except in so far as they had been incorporated in the immediately preceding Cecil-Miller draft. Even more instrumental than this was a revision which Mr. Hurst had prepared, with the approval of the British delegation, before his session of co-ordination with Mr. Miller on the afternoon of February 1 and the night of February 1-2, 1919. The latter has himself brought to public attention the very considerable extent to which Mr. Hurst was responsible for the language of the draft which bears the names of both of them.<sup>33</sup>

Together the legal advisers of the two delegations achieved a great improvement in the clarity and brevity of the Covenant. The longest article in Mr. Wilson's second Paris draft, for instance, contained 776 words; the longest article in the Hurst-Miller draft contained only 323 words. This seeming gain in conciseness, however, was in some very important instances a result of amputation rather than condensation.

In particular, excision was applied in the very vital issue of the right of the League to recommend modifications of treaty settlements, thereby making it a vehicle through which rearrangements shown by the passage of time to be obviously undesirable could be peacefully corrected. This development had come through various draft covenants to form Article III of the Cecil-Miller draft as follows:

<sup>32</sup> Seymour, Vol. IV, pp. 299-300.

<sup>33</sup> Parts of Mr. Hurst's preliminary revision are printed as Document 13 in Miller, Vol. II. They are almost verbatim the same as the agreed articles of the Hurst-Miller draft, the text of which may be consulted in Miller, Vol. II, pp. 231-37.

The High Contracting Powers undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all States members of the League.

If at any time it should appear that any feature of the settlement made by this covenant and by the present treaties of peace no longer conforms to the requirements of the situation, the League shall take the matter under consideration and may recommend to the parties any modification which it may think necessary. *If such recommendation is not accepted by the parties affected, the States, members of the League, shall cease to be under any obligation in respect of the subject matter of such recommendation.*

In considering any such modification the League shall take into account changes in the present conditions and aspirations of peoples or present social and political relations, pursuant to the principle, which the High Contracting Powers accept without reservation, that governments derive their just powers from the consent of the governed.<sup>34</sup>

In his revision of the Cecil-Miller draft Mr. Hurst simply omitted the two last paragraphs of this article, retaining only the first. As shown by a glance at the preceding text, the change eliminated all the qualifications which softened and, to many critics, made tolerable the clause of territorial guarantee. Mr. Miller, in his own words, "at once agreed" to this sweeping alteration made by the British legal adviser, and what had been merely the initial paragraph of an important article in the Cecil-Miller draft became by itself an article (Number VII) with very different bearing in the Hurst-Miller draft.<sup>35</sup> Eventually this truncated article became the first half of the famous Article 10 of the final Covenant, there playing an important part in the rejection of the Covenant by the United States Senate. While a milder provision for the reconsideration of treaties was later put back in

<sup>34</sup> Cecil's contemporary marginal note on this article said: "This should be confined to territorial changes, otherwise it will be too vague." The clause of outstanding significance has been italicized.

<sup>35</sup> Compare Miller, Vol. I, p. 71. See also below, pp. 87-90.

the Covenant as what is now Article 19, it never served as a direct offset to the territorial guarantee clause. Territorial guarantee alone and unrelieved was of course a very different matter to territorial guarantee intimately linked with provision for territorial revision.

#### THE SECOND ANGLO-AMERICAN DRAFT

By the Hurst-Miller draft, settlement was made of the various outstanding issues between the American and British viewpoints which had been "reserved" for further consideration in the Cecil-Miller draft. As has been noted, there were five of these issues which had aroused contention. The solution found was to retain two of them in the Covenant, eliminate two, and find a new formula for the other. In all of these cases controversial principles espoused by President Wilson were modified through British influence. None of them was a case in which negative American opinion was exercised against an affirmative British stand.

The two "reserved" issues retained in the Hurst-Miller draft were those concerning the mandates system and economic equality. From the beginning the former had been the least academic, the most involved in immediate and passionate political considerations, of all the principles embodied in the various draft covenants. Mention has already been made of the British "Draft Convention Regarding Mandates," which that delegation had wished to substitute for Wilson's clauses on the subject.<sup>36</sup> On January 30, 1919, five days after this British plan was handed to the American delegation, a very important

<sup>36</sup> See p. 54 above. There is a voluminous literature on the establishment of the mandates system at the Paris Peace Conference. For scholarly treatment of the subject reference may be made to Benjamin Gerig, *The Open Door and the Mandates System*, Chap. IV; to Pitman B. Porter, "Origin of the System of Mandates under the League of Nations," in *American Political Science Review*, Vol. XVI, pp. 563-83; and to Miller, Vol. I, Chap. IX.

resolution on mandates, containing the present division of mandated areas into "A", "B", and "C" categories, was adopted by a fiery session of the Council of Ten. With the exception of the first two paragraphs, which specified that "in no circumstances should any of the German colonies be restored to Germany," and asserted "the historic misgovernment by the Turks of subject peoples," the resolution was with little change of language carried over to form Article 22 of the final Covenant. This resolution was before Messrs. Hurst and Miller when they met on February 1 to establish a definitive Anglo-American draft covenant. But because it was then undecided whether the division of mandated areas into categories should be made by the Covenant, or by separate agreements, the article of the Hurst-Miller draft concerning mandates confined itself to the following brief statement of general principles. In the final Covenant the approval of the "Open Door" policy in this draft was confined to "B" mandates, and even to these in qualified form.<sup>37</sup>

The High Contracting Parties agree that in respect of territories which formerly belonged to the German Empire or to Turkey, and which are inhabited by peoples unable at present to secure for themselves the benefits of a stable administration, the well-being of these peoples constitutes a sacred trust for civilisation, and imposes upon the States members of the League the obligation to render help and guidance in the development of the administration. They recognise that all policies of administration or economic development should be based primarily upon the well-considered interests of the peoples themselves, upon the maintenance of the policy of the Open Door, and of equal opportunity for all the High Contracting Parties in respect of the use and development of the economic resources of the territory. No military or naval forces shall be formed among the inhabitants of the territories in excess of those required for purposes of defence and of internal police.

<sup>37</sup> Compare the last clause in Article 22(5).

The second of the two issues, previously "reserved" between the British and Americans, to find its way into the Hurst-Miller draft and thence into the final Covenant was that relating to equality of trade conditions. The evolution of this part of the Covenant is perhaps of especial interest, since it has proved the constitutional foundation upon which all of the far-reaching economic activities of the League have been based. The improvement of international economic co-operation had been the theme of the third of President Wilson's Fourteen Points, stipulating:

The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.

At Paris, a good deal of thought was devoted to the subject, on the understanding that the goal intended was the elimination of retaliatory and discriminatory tariff systems rather than any general limitation of freedom in carrying out national policy. A part of the work done was the preparation of draft conventions on the subject by both the American and British delegations.<sup>88</sup> But at the time the political, let alone the technical, obstacles to concluding a definite multilateral treaty on the subject seemed insurmountable. In consequence, international co-operation in the removal of trade barriers was left as an activity for the League to take up in due course, and only general statements of principle relating to the subject are found in the later draft covenants, beginning with President Wilson's second Paris draft. The wording of the appropriate section of this, of the Hurst-Miller draft, which took its phraseology here from the official British draft of January 20, 1919, and of the final Covenant, may be contrasted:

<sup>88</sup> The texts of these are given in Miller, Vol. II, Document 4.

WILSON'S THIRD  
DRAFT

It is further covenanted and agreed by the signatory Powers that in their fiscal and economic regulations and policy no discrimination shall be made between one nation and another among those with which they have commercial and financial dealings.

HURST-MILLER  
DRAFT

The High Contracting Powers will agree upon provisions intended to secure and maintain freedom of transit and just treatment for the commerce of all States members of the League.

## FINAL COVENANT

The members of the League will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all members of the League. In this connection the special necessities of the regions devastated during the war of 1914-18 shall be borne in mind.

While the Hurst-Miller draft thus assured the inauguration of League activities in the field of mandates supervision and international economic co-operation, it also dropped from the Covenant two of the previously "reserved" issues. One of these was President Wilson's "Supplementary Agreement" for the protection of racial and national minorities, which went to the Peace Conference Committee on New States and finally came back into the sphere of League activities, though not into the League Covenant, by the terms of the various Minorities Treaties signed after the Peace Conference.

The other issue struck from the Covenant at this time, but by no means eliminated as an international problem, was that of the freedom of the seas. This had been the eighth "Supplementary Agreement" in Wilson's second Paris draft. It was an American thesis on which most of the American delegation, and a very large part of the American nation, had strong feelings. It was the second of the Fourteen Points, and the only one of them which was completely neglected by the Treaty of Peace, even though it visualized international sanctions as an exception to the general rule, as its wording shows:

Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas

may be closed in whole or in part by international action for the enforcement of international covenants.

With the consequences of the elimination from the Covenant of any indorsement of the doctrine of the freedom of the seas, this study is not directly concerned. But that those consequences have been momentous is beyond question. Had Great Britain been willing to write the doctrine into the Covenant the seed of Anglo-American naval rivalry would not have sprouted. On the other hand, had the United States joined the League there would not have been the same demand for revision of the laws of the sea, since in the event of war between League members the position of the United States would not have been that of a neutral. If President Wilson had anticipated that the United States would abstain from League membership it is in the highest degree unlikely that he would have agreed to the elimination of the doctrine from the Covenant.<sup>39</sup> As it happened, the right of blockade in public war was established, but not the correlative right of freedom of the seas in time of private war. In theory, what would be "public war" for League members would still be "private war" from the viewpoint of non-member States. The situation, however, has been considerably improved by the adoption of the Pact of Paris, which has done so much to bridge the gap between those States which adhere to and those which are not bound by the League Covenant. It may be argued that between the signatories, including the United States and Russia, of the agreement for the renunciation of all war as an instrument of national policy, there can no longer be legal "private war."

The remaining issue which had been "reserved" in the Cecil-Miller draft was President Wilson's excessively complicated procedure for appeal and re-submission to

<sup>39</sup> Compare letter from House to Wilson, July 30, 1919, quoted in Seymour, Vol. IV, p. 497.



arbitration of disputes which had resisted initial arbitral procedure. In place of this Mr. Hurst had drafted, and Mr. Miller accepted, a brief provision for the establishment of a world court, which served as the basis of Article 14 in the final Covenant. This was the step, instigated by the British, which brought the Permanent Court of International Justice into existence, though the famous "advisory opinion" clause was added later, as shown by the following texts:

#### HURST-MILLER DRAFT

The Executive Council will formulate plans for the establishment of a permanent court of international justice and this court will be competent to hear and determine any matter which the parties recognize as suitable for submission to it for arbitration under the foregoing article.<sup>40</sup>

#### FINAL COVENANT

The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a permanent court of international justice. The court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

The mediatory and conciliatory functions of the Council, eventually established in Article 15 of the Covenant, were largely taken over by the Hurst-Miller draft from the preceding Cecil-Miller draft, which in its turn had largely incorporated them from the British draft covenant of January 20. Certain vestiges of President Wilson's ideas concerning the mediatory functions of the Council can be traced through to the final Covenant. But his elaborate and explicit arbitration provisions were jettisoned, partly because they were to a large extent

<sup>40</sup> The "foregoing article" in the Hurst-Miller draft provided for submission to arbitration of disputes "which cannot be satisfactorily settled by diplomacy."

rendered superfluous by the decision to establish a world court, partly because the British thought it inadvisable rigidly to define the procedure of arbitration once submission to the process had been agreed upon in advance.

Such, in essentials, were the important changes introduced into the Covenant by the Hurst-Miller draft. In other respects, such as limiting Council membership to the Great Powers, and in making the Assembly a subordinate body with rather vague functions, it followed the course already charted by the immediately preceding drafts. By the Hurst-Miller draft a united front for a single Covenant was secured between the British and American delegations. This meant that its general design was now permanently established. The record shows which delegation changed its original position most in order to secure the essential concord between the two.

#### WILSON'S FOURTH DRAFT

To complete the record, however, one more draft covenant must be mentioned, even though it proved to be without influence on the League's Constitution as finally written. This was the fourth (and last) draft covenant of President Wilson, prepared on February 2, the day before the first meeting of the Peace Conference Commission on the League of Nations.

The Hurst-Miller draft was finished in the early morning of February 2, 1919 (a Sunday), was immediately printed, and was discussed that evening at a meeting between President Wilson, Colonel House, and Mr. Miller. In the first volume of his invaluable source book on *The Drafting of the Covenant* the latter frankly observes: "Mr. Wilson said that he did not like the Hurst-Miller draft very much, that a great many things had been taken out, some of which he thought were important."<sup>41</sup> As a result of this dislike the President there and then sug-

<sup>41</sup> P. 72.

gested certain important changes in his own last draft, asking Mr. Miller to have these made in time for the first meeting of the Peace Conference Commission the following afternoon. The alterations were duly made by the American legal adviser in the course of another midnight session, and printed copies of President Wilson's fourth draft covenant (his third Paris draft) were delivered to him the following morning (February 3). These copies drew from Mr. Wilson a letter which confirms the evidence that he wanted his own final draft, and not the Hurst-Miller document, to be the foundation of the League's Covenant. This letter to David Hunter Miller said:

Thank you for the copies of the revised "Covenant." I am deeply indebted to you for a highly serviceable and extraordinarily prompt piece of work and I hope with all my heart that it will serve as the basis of the work of the Drafting Commission.<sup>42</sup>

Mr. Miller does not explain why the President's earnest wish for this substitution was completely disregarded. In the words of the former, he "did not have the slightest idea that the Hurst-Miller draft was to be presented" to the Peace Conference Commission until told so by Colonel House just before its first meeting opened on the afternoon of February 3.<sup>43</sup> The explanation, however, is found in the diary of Colonel House under date of February 3, 1919, as follows:

I had my usual call from Wiseman. He said Lord Robert was greatly perturbed when he heard that the President, Miller, and I had gotten together last night and revamped our own Covenant of the League of Nations.

Miller, the President, and I worked (last night) from a little after eight until after ten o'clock. I tried to get the President to accept the [Hurst-Miller] draft which had been agreed upon Friday night which Cecil, Smuts, he, and I had

<sup>42</sup> Miller, Vol. I, p. 75.

<sup>43</sup> The same, p. 130.

approved.<sup>44</sup> He said the document had "no warmth or color in it" and he very much preferred the one which we already had. I agreed with him, and yet I knew the wisest thing to do was to accept the other as a basis for our discussions today. After we revamped our own, Miller remained up the entire night supervising the printing of it and had it ready for us by breakfast this morning. Sir William [Wiseman] thought it would be exceedingly unwise to let Lord Robert come into the general meeting of the Committee this afternoon feeling as he did, and asked what suggestions I had to make. I told him to have Cecil come a quarter of an hour before the meeting and I would undertake to have the President here and we would see what could be done.

I telephoned the President and told him we were making a mistake in not keeping Lord Robert Cecil in harmony with us; he was the one man connected with the British government who really had the League of Nations most at heart. . . .

The three of us met promptly at 2:15 in my study. The meeting bade fair to be stormy for the first seven or eight minutes. After that, things went better and the President finally decided . . . to take the joint draft of Miller and Hurst and use it as a basis for discussion. After that, everything went smoothly.<sup>45</sup>

It was foreordained that the groundwork of the League Covenant had to be an Anglo-American plan, assuming that the Covenant was to make its way over indifference and outright hostility to find establishment in the Treaty of Peace. And it was almost equally certain that in such a compromise plan one or other of the partners would make his wishes predominate. In the Hurst-Miller draft it was the British viewpoint which in general prevailed, though in truth the division of thought did not clearly correspond with the national alignment. Retrospective

<sup>44</sup> This seems rather an overstatement. Cecil, Smuts, House, and Wilson had accepted the Hurst-Miller draft *en principe* before it was prepared. This did not mean automatic approval of its very extensive changes. It can, however, be stated as a matter of unrecorded history that Cecil was disposed to view Wilson's fourth draft as an effort to substitute a purely American basis for the Covenant at the expense of the Anglo-American accord reached in the Hurst-Miller draft. Either Wilson or Cecil had to give in. Wilson did so.

<sup>45</sup> Quoted in Seymour, Vol. IV, pp. 302-03.

examination of the essential features of President Wilson's final draft, moreover, leaves it questionable whether the Covenant was in any essential respect weakened by the elimination of certain principles by which he had set store.<sup>46</sup>

The principal points which were retained by Mr. Wilson in his fourth draft, after they had been eliminated in the Hurst-Miller compromise, were (1) the provision for the freedom of the seas; (2) the provision that a government "based upon the principle of popular self-government" should be a necessary prerequisite for membership in the League of countries not original parties to its Covenant; (3) the provision that members of the Body of Delegates (Assembly) should be "the diplomatic representatives of the Contracting Powers" accredited to the capital of the nation where the League should be situated; (4) the provision that membership in the Council should follow the plan first suggested by General Smuts, whereby the Great Powers (five in number) would have a bare majority and the Intermediate and Minor Powers would provide the other members (two from each group) "in annual rotation from two panels"; (5) the provision for an outright ban on the private manufacture of "munitions and implements of war"; (6) the provisions for detailed arbitration and appeal machinery in place of any arrangement for a permanent court of international justice.

All of these provisions the British delegation had strongly opposed, either on principle or from self-interest, as in the case (numbers 2 and 3 above) of the articles which would have made separate League membership for the dominions and India more difficult. In the case of enlarged Council membership and in the use of the phrase "fully self-governing State, dominion or colony"

<sup>46</sup> The text of Wilson's fourth draft covenant is Document 14 in Miller, Vol. II.

in Article 1(2) of the final Covenant, however, two of these Wilsonian provisions were restored as a result of the work of the Peace Conference Commission on the League.

In certain of the provisions which he wished retained Mr. Wilson, in his fourth draft, made changes of greater or less importance. The "freedom of the seas" article in his third draft, for instance, had started with the assertion that: "The rights of belligerents on the high seas outside territorial waters having been defined by international convention, it is hereby agreed and declared. . . ." In the fourth draft this article, otherwise unchanged, was begun in a different tense: "When the rights of belligerents on the high seas outside territorial waters shall have been defined by international convention. . . ."

Certain other changes made by the President in his last draft were in conformity with those already agreed upon by Messrs. Hurst and Miller. Of these by far the most important was his acceptance of the elimination of the qualifying clauses, relating to future League revision of the Peace Treaties, which had followed the territorial guarantee clause in earlier drafts.

In other respects Mr. Wilson sought to meet the Hurst-Miller draft half-way. Such was the case in the question of the application of sanctions against a non-member of the League. Wilson's third draft had provided, "in the event of a dispute arising between one of the Contracting Powers and a Power not a party to this Covenant," that the non-member State should be invited to become an *ad hoc* party to the Covenant, failing acceptance of which invitation future action by the Council was limited to inquiry and recommendation. The Hurst-Miller draft made the use of sanctions applicable against a non-member State which refused *ad hoc* membership and, after refusing, committed an act of aggression against a League member. Wilson's fourth draft made it more clear than its predecessor that it should be a primary right

of the Council to intervene in such disputes. But it failed to envisage the exercise of sanctions against a recalcitrant non-member State, as did the Hurst-Miller draft and after it Article 17(3) of the final Covenant.

The shelving of Mr. Wilson's fourth draft covenant marked the decline of the President's leadership, though not of his influence, in the evolution of the League's Constitution. Later amendment brought back the substance of two of the provisions rejected by the Hurst-Miller draft. But it was the latter which was the basis of the discussion of the Peace Conference Commission, and therefore the foundation of the eventual Covenant.

## CHAPTER III

### FORMATION OF THE COMMISSION DRAFT

The Commission on the League of Nations, which developed the Covenant out of the Anglo-American (Hurst-Miller) draft, was nominated by the Peace Conference during the plenary session of January 25, 1919. As originally composed it consisted of fifteen members, two for each of the five Great Powers and five elected "to represent all the Powers with special interests." At a meeting of the latter, held on January 27, 1919, Belgium, Brazil, China, Portugal, and Serbia were chosen to designate one representative each. This caucus, however, expressed the opinion that the smaller Powers should have additional representation in the final drafting of the Constitution of the League of Nations, and at its second meeting the Commission, by nine affirmative votes,<sup>1</sup> agreed to enlarge itself to include one representative each for Greece, Poland, Roumania, and Czechoslovakia. These four additional members, making nineteen in all, were present for the first time at the fourth meeting of the Commission, held on February 6, 1919.

This enlargement of the Commission was not without historical importance and constitutional significance. It showed that the interest of the smaller Powers in the nascent League had been growing during the period of Anglo-American negotiations, and the demand for a broader representation on the Commission foreshadowed the failure of the British effort to confine membership on the Council to the five Great Powers. The decision whereby all the "Powers with special interests" elected

<sup>1</sup> The official records do not specify which delegates opposed the enlargement of the Commission. It appears that the six members who failed to vote in favor of enlargement were the representatives (two in each case) of the British Empire, Japan, and the United States.



some of their number to the Commission, as representatives of the whole body, lends additional support to the present-day argument that the elected members of the League's Council are to be regarded as responsible representatives of the Assembly as a whole, which chooses them, rather than as purely national spokesmen in a separate chamber.

It is also worthy of note that the number of States represented on this Peace Conference Commission was the same as the number which has been represented on the Council since 1926. As there are now five permanent and nine elected members of the Council, so there were on the Peace Conference Commission of 1919 five Great Powers, chosen in their own right, and nine others selected to represent the remaining Allied and Associated Powers. The Commission, however, was less representative in the regional sense than the present-day Council, all but two of the elective seats being held by European countries. War-time psychology was evidenced by the fact that every European nation which had declared war on Germany and her allies excepting only Russia and Montenegro, soon to be merged in Yugoslavia, was given a seat on the Commission on the League of Nations.

The personnel of the Commission was imposing. Its nineteen members, after the addition of representatives from Greece, Poland, Roumania, and Czechoslovakia, included the President of the United States as chairman, a future President of Brazil, the Prime Ministers of Italy, Greece, Czechoslovakia, and Yugoslavia,<sup>2</sup> a former Prime Minister of France, the Belgian Foreign Minister, a former Foreign Minister of Japan, and future Foreign Ministers of Italy and China. President Wilson, Lord Robert Cecil, and General Smuts had all done heroic

<sup>2</sup> Neither this new name nor the more official "Kingdom of the Serbs, Croats and Slovenes" was at this time in general use for enlarged Serbia.

work in making the idea of the League of Nations appear practical in the eyes of the world, while M. Léon Bourgeois had represented France at the First Hague Conference in 1899 and thereby exemplified continuation of The Hague tradition through the League of Nations.<sup>3</sup> The full list of the membership was as follows:

President Wilson . . . . .	}	United States of America
Colonel House . . . . .		
Lord Robert Cecil . . . . .	}	British Empire
Lieutenant General J. C. Smuts . . . . .		
M. Léon Bourgeois . . . . .	}	France
M. Larnaude . . . . .		
Signor Orlando . . . . .	}	Italy
Senator Scialoja . . . . .		
Baron Makino . . . . .	}	Japan
Viscount Chinda . . . . .		
M. Hymans . . . . .		Belgium
Senhor Epitacio Pessoa . . . . .		Brazil
Mr. V. K. Wellington Koo . . . . .		China
M. Kramar . . . . .		Czechoslovakia
M. Veniselos . . . . .		Greece
M. Dmowski . . . . .		Poland
Senhor Jayme Batalha-Reis . . . . .		Portugal
M. Diamandy . . . . .		Roumania
M. Vesnitch . . . . .		Serbia

Even a cursory study of the *Minutes* discloses that Mr. Wellington Koo of China and M. Vesnitch of Jugoslavia, to cite two outstanding examples, played a role in the deliberations of the Commission which was disproportionately great when compared with the influence of their countries at the Peace Conference as a whole. The influence exerted by able representatives of certain weak Powers on the League's Council would seem to be in part a heritage of the important position taken by representatives of some secondary countries in the final stages of the drafting of the Covenant.

<sup>3</sup> Compare Harold Temperley, *A History of the Peace Conference at Paris*. Vol. VI. p. 434.

The terms of reference of the Commission, as determined by the plenary session of the Peace Conference on January 25, were limited to a few general principles, as follows:

The Conference, having considered the proposals for the creation of a League of Nations, resolved that—

1. It is essential to the maintenance of the world settlement, which the Associated Nations are now met to establish, that a League of Nations be created to promote international co-operation, to ensure the fulfilment of accepted international obligations and to provide safeguards against war.

2. This League should be created as an integral part of the general Treaty of Peace, and should be open to every civilized nation which can be relied on to promote its objects.

3. The members of the League should periodically meet in international conference, and should have a permanent organization and secretariat to carry on the business of the League in the intervals between the conferences.

The Conference therefore appoints a Committee representative of the Associated Governments to work out the details of the constitution and functions of the League.<sup>4</sup>

#### STAGES OF THE COMMISSION'S WORK

The Commission held its first meeting on the afternoon of February 3, 1919, and thereafter sat either the morning, afternoon, or evening of every day, excepting February 9 and 12, through February 13, when the ninth and tenth meetings were held in the morning and afternoon respectively. On February 14, the Covenant as adopted in second reading by the Commission was presented to a plenary session of the Peace Conference, not for approval but "for examination and discussion by all the interested Powers." President Wilson left for the United States the same day, to be absent from Paris

<sup>4</sup> *Minutes* (English), Preliminary Peace Conference, Commission on the League of Nations, p. 2. Through typographical error the original *Minutes* have the word "treated" for "created" in paragraph 2 of the resolution. Compare David Hunter Miller, *The Drafting of the Covenant*, Vol. II, p. 230.

exactly a calendar month, during which period many important criticisms of the draft covenant in its then existing form were received. On March 20 and 21, after Mr. Wilson's return, a sub-committee of the Commission held two meetings with representatives of thirteen neutral Powers,<sup>5</sup> at which the draft of February 14 was discussed article by article. The eleventh, twelfth, and thirteenth meetings of the full Commission were held on March 22, 24, and 26, and a number of amendments designed to meet American and neutral criticisms were then made. The final drafting committee appointed by the Commission reported the Covenant back on April 5, and the closing meetings of the Commission (fourteenth and fifteenth) were held on April 10 and 11. On April 28, 1919, the revised Covenant was accepted unanimously by a plenary session of the Peace Conference.

Three well-defined stages are thus apparent in the Commission's work: (1) the period of initial consideration, from February 3 to 14, when the Hurst-Miller draft was made acceptable to the full Commission; (2) the period of reflection, from February 14 to March 26, when the draft was open to criticism from every quarter and perceptibly improved in consequence; and (3) the period of completion, from March 26 to April 28, when the last changes were made by a committee on revision and the final Covenant passed in the form in which it was adopted as Part I of the Treaty of Versailles. These three stages are considered respectively in this chapter and the two following. The fact that the Covenant was agreed upon in only fifteen meetings of the Commission has been frequently cited as a remarkable example of extraordinarily rapid constitutional construction. But the foregoing chapters will have made clear that the

<sup>5</sup> These thirteen neutrals were the "States invited to accede to the Covenant" on its adoption, comprising Argentina, Chile, Colombia, Denmark, Holland, Norway, Paraguay, Persia, Salvador, Spain, Sweden, Switzerland, Venezuela.

Commission started work with a relatively finished product, and it is also to be remembered that during the hours and days when the Commission was not sitting the evolving Covenant was being worked over at almost continuous informal conferences by various experts of many of the national delegations assembled at Paris for the Peace Conference.

Although the official *Minutes* state that both a French and an Italian draft constitution for the League were laid before the Commission at its opening meeting, these actually were put into the *Minutes* as annexes at some later date.<sup>6</sup> The only draft at the first meeting of the Commission was the accepted Anglo-American agreement, informally known as the Hurst-Miller draft. And the one notable action of this meeting was the decision that the procedure of the Commission should be the discussion of this draft, article by article, thus insuring that the accord already reached by the British and American delegations should be the basis of the Constitution of the League. While there was some sentiment at this meeting for a preliminary consideration of the general principles on which the Covenant should be based, it evaporated before the insistence of President Wilson on detailed examination of the work already accomplished.

#### THE SECOND MEETING AND COUNCIL ENLARGEMENT

The outstanding event at the second meeting of the Commission, held during the evening of February 4, 1919, was an open rebellion against Lord Robert Cecil's plan, incorporated in the Hurst-Miller draft, for a Council composed of the Great Powers only. The chief British delegate was virtually alone in supporting this

<sup>6</sup> Compare Miller, Vol. I, p. 132. The French draft was that adopted by the Ministerial Commission on June 8, 1918, referred to in pp. 13-15 above. The Italian draft, which contributed little to the final Covenant, is printed as Document 21 in Miller, Vol. II.

position, both the French and Italian spokesmen favoring representation of the smaller nations. M. Hymans, envisaging Germany as an eventual member, argued that between the greater efficiency anticipated from a small Council and the greater confidence inspired by a more representative body, the latter would be the preferable asset. M. Vesnitch made the point that no organ of the League of Nations should present *uniquement des intérêts matériels*. Under a barrage of opposition Cecil finally admitted that "as the consensus of opinion on the Commission was against him," the article would have to be redrafted.<sup>7</sup>

An important contribution by Dr. Koo at this juncture anticipated the eventual division of the Council between permanent and non-permanent members. The Chinese delegate also visualized the presence of the latter on the Council in a representative capacity, observing that while:

it was probably true that the interests of any so-called Great Powers were greater than those of any of the so-called Secondary Powers, it was certainly true that no one Great Power had interests greater than the aggregate interests of all the so-called Secondary Powers of whom there were more than fifty.<sup>8</sup>

A further development of very considerable moment at this second meeting of the Commission was the provision that the Body of Delegates (Assembly) should meet not merely "from time to time as occasion may require," as stipulated in the Hurst-Miller draft, but also "at stated intervals." The insertion of these three important words was the suggestion of President Wilson, following an observation by M. Bourgeois in favor of periodical meetings. This move to give the Assembly continuity, now established by Article 3 (2) of the Cov-

<sup>7</sup> *Minutes* (English), second meeting, p. 20.

<sup>8</sup> Miller, Vol. I, p. 152.

enant, was a necessary preliminary to the action of the First Assembly in establishing the practise of regular annual sessions as the first of its Rules of Procedure, a step which has proved of the greatest importance in the constitutional development of the League.<sup>9</sup>

Another important agreement reached at this meeting was with respect to the name of the new organization: "League of Nations" in English and "Société des Nations" in French. A suggestion by Senhor Pessoa favoring "Union of States" was withdrawn after Mr. Wilson's comment that this "would indicate that the Commission was going further than it really was going."<sup>10</sup>

#### THE THIRD MEETING AND LEAGUE MEMBERSHIP

The discussion regarding the composition of the Council ran over into the third meeting of the Commission and the issue was not finally settled even then. While Colonel House had prepared for this meeting a redraft of Article 3 of the Hurst-Miller draft, whereby four States other than the five Great Powers would have been admitted to Council membership, a British redraft stipulated that only two of the smaller nations should be represented on the Council. The debate was at times almost acrimonious. To Lord Robert Cecil's remark that: "The chief need in making the League a success is the support of the Great Powers," M. Hymans retorted: "What you propose is nothing less than the Holy Alliance."<sup>11</sup>

Eventual enlargement of the Council was foreseen in the discussion, M. Hymans observing that if the number of Great Powers thereon increased, so the representation of the smaller Powers should increase *pari passu*. The debate also brought out the point, later incorporated in

<sup>9</sup> Compare pp. 510-11 below.

<sup>10</sup> Miller, Vol. I, p. 142.

<sup>11</sup> Notes of Mr. Whitney Shepardson; quoted by Miller, Vol. I, pp. 158-67.

Article 5(1) of the Covenant, that the unanimity rule was always regarded as implicit in all major actions by League organs. "All international decisions," said Lord Robert Cecil, "must by the nature of things be unanimous."<sup>12</sup> Finally, the British redraft of the article concerning Council membership was adopted, but with a reservation as to the number of States which should have membership thereon as representatives of the smaller Powers.

In contrast to the lengthy debate on the above issue, the article of the Hurst-Miller draft providing diplomatic immunities for League officials and extra-territoriality for its buildings was accepted without any discussion. These provisions, now incorporated in the last two paragraphs of Article 7 of the Covenant, were of course of the greatest importance in defining the constitutional character of the association of States then being formulated. Restraint on the tendency to create a super-State, however, was exercised at this meeting when, at the suggestion of M. Bourgeois, the expression "Capital of the League" was changed to "Seat (*Siège*) of the League," the phrase now used in Article 7(1) of the Covenant. Another provision of the Hurst-Miller draft which was adopted without question was that which provided that the expenses of the League should be apportioned among its members on the basis used by the Universal Postal Union. This method proved very unfair in practise and was eventually abandoned as the result of an amendment to the Covenant—Article 6(5)—which came into force on August 13, 1924.<sup>13</sup>

The third meeting of the Commission also saw an important discussion over President Wilson's proposal to insert among the qualifications for League membership the following phrase:

<sup>12</sup> The same.

<sup>13</sup> Compare p. 512 below.



Only self-governing States shall be admitted to membership in the League; colonies enjoying full powers of self-government may be admitted.<sup>14</sup>

In somewhat altered form these stipulations are now found in Article 1(2) of the Covenant, but at the time they aroused opposition from Lord Robert Cecil as likely to cause the exclusion of India from League membership. President Wilson replied that "even though it may be hard to exclude India, yet the express recognition of the principles of democracy should find place in the Covenant."<sup>15</sup> The threatened impasse was averted when it was pointed out by General Smuts that India would become a League member as a signatory of the Peace Treaty, including the Covenant, independent of any conditions which might be laid down concerning subsequent members. During the debate M. Bourgeois argued for a unanimous vote on the question of admission to League membership,<sup>16</sup> and urged some ban which would prevent German admission under a blanket provision. The effective retort made by President Wilson to this thesis was:

Even all the States now here associated are not regarded by all other States as having good characters. We ought not to pass an act of oblivion by putting up standards that we have not always lived up to ourselves.<sup>17</sup>

A serious omission of the Hurst-Miller draft was repaired at this meeting when it was agreed that the Chancellor, now Secretary-General, of the League should be appointed by the Council. Previously no method for the appointment of this important officer had been specified. Subsequent to the third meeting of the Commission

<sup>14</sup> *Minutes* (English), third meeting, p. 22.

<sup>15</sup> Notes of Mr. Whitney Shepardson.

<sup>16</sup> The Hurst-Miller draft, like the eventual Covenant—Article 1(2)—provided for admission of new members on a two-thirds vote of the Assembly.

<sup>17</sup> Notes of Mr. Whitney Shepardson.

it was agreed that the first Secretary-General should be named in an annex to the Covenant and that his successors should be appointed by the Council *with the approval of the majority of the Assembly*, as now defined by Article 6(2) of the Covenant.

#### THE FOURTH MEETING AND ARTICLE 10

At the beginning of this meeting, on the evening of February 6, 1919, the Commission took up Article 7 of the Hurst-Miller draft. With some modification this was later to become the famous Article 10 of the final Covenant. Reference has already been made to the drastic step whereby the qualifying treaty-revision clauses which had at first balanced the territorial guarantee clause in this article were eliminated,<sup>18</sup> leaving Article 7 of the Hurst-Miller draft the bald and bold obligation that:

The High Contracting Parties undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all States members of the League.

When this article came before the Commission Lord Robert Cecil proposed omission of the words "and preserve as against external aggression." There was also on the table at the time a further British amendment to this article which would have added the following:

Subject, however, to provision being made by the Body of Delegates (Assembly) for the periodic revision of treaties which have become obsolete and of international conditions the continuance of which may endanger the peace of the world.<sup>19</sup>

This amendment would have restored the balance between territorial guarantee and treaty revision which had been maintained in all the British and American

<sup>18</sup> Above, pp. 64-65.

<sup>19</sup> Compare Miller, Vol. I, p. 153 and Vol. II, p. 550.

draft covenants prior to the Hurst-Miller draft.<sup>20</sup> But Lord Robert Cecil's effort to take the teeth out of the territorial guarantee provision met with immediate opposition from President Wilson with whom the principle of positive guarantee was a fundamental tenet, as noted in the opening chapter of this study. At the fourth meeting of the Commission Mr. Wilson asserted that this idea, though not necessarily in the words under consideration, should be regarded as the key to the whole Covenant.<sup>21</sup> The President's attitude was supported by Signor Orlando, and to some extent by M. Larnaude, both representatives of countries to which the stereotyping of newly extended frontiers seemed desirable. In consequence, both of the British amendments, or both sections of the same amendment to be strictly accurate, were lost. The effort to reinsert a treaty-revision clause did, however, lead later to the insertion in the Covenant of what is now Article 19, providing for recommendation by the Assembly for the reconsideration of treaties "which have become inapplicable." On the suggestion of President Wilson, moreover, the controversial article was somewhat modified during the fourth meeting of the Commission by the addition of a sentence reading:

In case of any such aggression the Executive Council shall advise the plan and the means by which this obligation shall be fulfilled.

Thus amended, and with only minor alterations later, Article 7 of the Hurst-Miller draft came through to be Article 10 of the final Covenant, and as such the greatest single factor in the refusal of the United States Senate to permit membership of the United States in the League of Nations.

<sup>20</sup> Compare Temperley, Vol. VI, p. 445, who observes that the omission of the qualification of treaty revision "may well be regretted" in view of the attack leveled against Article 10 in its final form in the United States.

<sup>21</sup> Miller, Vol. I, p. 168.

A point which did not arise at this meeting, and which was not settled beyond question by the wording of the final Covenant, was whether the "advising" by the Council, in cases of aggression, can be done over the opposition of a member of that body. Under the unanimity rule specified in Article 5(1), however, it would appear that a single adverse vote may block any Council action under Article 10. And unanimity under this article can scarcely be expected since exclusion of the disputant Powers is not there expressly provided. This interpretation was instrumental in keeping China from attempting to invoke Article 10 against Japan during the early stages of the Sino-Japanese dispute. The Chinese delegate was unable to obtain assurances that Council advice could be given over the protest of Japan, not to mention the prior necessity of obtaining a definition of Japan as an "aggressor" by a vote in which the Japanese delegate would have participated.

Thus, despite the furor aroused over Article 10 and the fantastic conclusions regarding it which have been drawn, its provisions in fact seem to have only a moral value. It is to be remembered that under Article 4(5) any member of the League has the right to sit "as a member" during Council consideration of matters specially affecting its interests. In other words, a State believed guilty of aggression by the remainder of the Council—or even by all the Council if this State is not already a member—is in a position to block positive action against itself under Article 10. To do so it is only necessary for the State in question to refuse to agree that it is an aggressor. In effect, Article 10 makes the defendant a member of the jury.

The separation of the qualification of treaty revision from the flat assertion of territorial guarantee, confirmed at this meeting of the Commission, has without doubt proved one of the most decisive factors in the history

of the League of Nations, even though it took place before the League was actually launched. A memorandum on the subject made by the writer immediately after a conversation with Lord Robert (then Viscount) Cecil at Geneva during the late summer of 1930 is given below. It serves to explain why the British delegation, after first indorsing and coupling the principles of territorial guarantee and treaty revision, then took the lead in eliminating the latter, then sought to reintroduce the principle of treaty revision, and finally secured a compromise whereby Article 19 of the final Covenant was supposed to offset Article 10. These notes on Viscount Cecil's observations, made in the course of a personal interview, are as follows:

Excision of the provisions for treaty revision in the so-called Hurst-Miller draft was not made by Hurst on his own authority. Viscount Cecil himself was very much in favor of giving the League the power to recommend revision, believing that the doctrine of the eternity of treaties, often drafted with punitive intent, has had most unfortunate consequences. Viscount Cecil was in fact much more in favor of the treaty-revision clauses of the original article than of the initial part of that article with its provision for territorial guarantee, which was a pet idea with President Wilson.<sup>22</sup>

However, all of the diplomatic officials of the British delegation held the view, also expressed by David Hunter Miller, that incalculable confusion would result from making the peace treaty indefinite by providing for revision of its territorial clauses in any certain terms. Accordingly Cecil, under pressure, gave instructions that the treaty-revision clauses should be eliminated from Article 3 of the Cecil-Miller draft, retaining only the guarantee clause, which became Article 7 of the Hurst-Miller draft. Cecil agrees that it was unfortunate that the territorial guarantee clause should have been left by itself, but notes, as does Miller, that this was to President Wilson the most essential part of the article.

During the meetings of the Commission Viscount Cecil endeavored to reunite the principle of territorial reconsidera-

<sup>22</sup> For the text of the article prior to its revision in the Hurst-Miller draft see p. 64 above.

tion with the principle of territorial guarantee, and though this effort was unsuccessful it eventually resulted in the inclusion of Article 19 in the Covenant. Viscount Cecil further agrees that it was unfortunate that the two principles should have been divided, since if there had to be a territorial guarantee clause it would have aroused much less opposition if modified, as was the original plan. Cecil's position on this point, however, does not seem to me altogether strong since he at first agreed with his diplomatic advisers to make the division without any great effort to save the treaty-revision principle which he afterwards sought with partial success to reintroduce into the Covenant.

An important article which underwent considerable revision during the fourth meeting of the Commission was that dealing with disarmament. On the request of the French delegates the last expression favoring abolition of conscription, which in the Hurst-Miller draft had dwindled to inquiry by the Council "into the feasibility of abolishing compulsory military service," was struck out. In its place President Wilson proposed restoration of the provision in his draft covenants whereby the Council was authorized to formulate an international disarmament policy. This proposal was accepted, and after certain changes in language came through to form paragraphs 2, 3, and 4 of Article 8 of the final Covenant. From these paragraphs, after long and arduous preparation, came the Plenary International Disarmament Conference summoned at Geneva in February, 1932. During the same discussion, also, Mr. Wilson reintroduced into the Covenant, in modified form, his earlier plan to eliminate the manufacture of munitions for private profit. With further qualifications this amendment became paragraph 5 of Article 8 of the final Covenant.

At this meeting Article 9 of the Hurst-Miller draft was adopted without change. With the later addition of what is now the last sentence in the first paragraph,

it became Article 11 of the Covenant. This is the article which opens with the declaration that:

Any war or threat of war, whether immediately affecting any of the members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations.

Though not discussed in any detail by the Commission this article has proved of great value in the operation of the League, since it permits completely impartial consideration of highly controversial issues without putting the Council in the position of taking sides.<sup>23</sup> It may be noted that its opening phrase originated in Colonel House's draft of July 16, 1918, and that the sentence quoted above is practically identical with the wording of Article VIII of President Wilson's first draft.<sup>24</sup>

Before adjournment the fourth meeting of the Commission also adopted the arbitration articles of the Hurst-Miller draft, now Articles 12 and 13 in the Covenant, and the section providing for the establishment of a permanent court of international justice, now Article 14. In none of these, at this time, were any substantial alterations made. The time limit of six months for a report from the Council, in cases submitted to inquiry by it, was adopted by the Commission at the instigation of Lord Robert Cecil and is now found in Article 12(2) of the Covenant.

<sup>23</sup> Compare T. P. Conwell-Evans, *The League Council in Action*. It has become a virtual rule that international disputes of a grave character should first come before the League under this article. Thus the initial request of the Chinese government in the Manchurian crisis of 1931 transmitted to the Secretary-General on September 21, was that: "... in virtue of Article 11 of the Covenant of the League of Nations, you forthwith summon a meeting of the Council of the League in order that it may take such action as it may deem wise and effectual so that the peace of nations may be safeguarded."

<sup>24</sup> Compare p. 17 above.

## THE FIFTH MEETING AND COERCIVE ACTION

The longest and most complicated article in the Covenant, containing 559 words, is the fifteenth, which outlines procedure to be followed in the case of international disputes which are not submitted to arbitration or judicial settlement. The corresponding article (13) of the Hurst-Miller draft was compressed into 323 words. The first steps towards expanding this important article into its present form were taken when the Commission met for the fifth time on the evening of February 7, 1919.

The chief shortcoming of this article in the Hurst-Miller draft was its failure to stipulate any effective procedure for cases submitted to the Council in which that body is unable to make a unanimous report, excluding the position taken by the parties to the dispute. This defect, which could only have been solved by agreement upon some form of compulsory arbitration, remains in the final Covenant, though there it is clarified by the frank admission, in paragraph 7 of Article 15, that there remain situations in which war between members of the League of Nations would be legal under its Constitution. The debates on this article, obviously, were of great importance in determining the political character of the League. An association of States permitting legal war between its members could in no circumstances be called a federation, still less a unified super-State. The characteristic, however, would not prevent definition of the association as a confederation.

On February 6, certain Belgian proposed amendments had been placed before the Commission. These would have bound League members not to go to war with any party complying with the recommendations of a *majority* report from the Council, and would have pledged League members "to execute in good faith the decision which shall have been rendered" in cases where the Council reported unanimously on a dispute, the dis-



putants excluded. The effect of the latter provision, in the words of David Hunter Miller, would have been "a form of compulsory arbitration effective as such when the members of the Executive Council were unanimous."<sup>25</sup>

These proposals were discussed at length in the Commission, with French, Serbian, and Greek support given to the Belgian thesis while Lord Robert Cecil and President Wilson "raised doubts as to the desirability of giving mandatory effect to the decisions of a majority of the Council."<sup>26</sup> The question of amendments to this article was then referred to a sub-committee, whence it returned to cause the Commission a good deal of vexation before final settlement.<sup>27</sup>

Next in order on the agenda were the important sanctions articles of the Covenant (now 16 and 17). It is notable that in these there was no discussion whatsoever of the principle involved, though the question of the desirability of coercive action by the League has since its establishment been a vehemently debated issue. By the Commission, however, the device of sanctions was accepted without question as a proper weapon to be employed against an aggressor State, whether a member of the League or not.<sup>28</sup> Indeed the wording of the Hurst-Miller draft in this respect was strengthened, for it would have made sanctions applicable only to a transgression of the obligations in what is now Article 12 of the Covenant. As a result of the Belgian amendments discussed at this session it was eventually decided to bring in reference to two other articles, so that the opening clause of Article 16 now reads:

Should any member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall *ipso facto*

<sup>25</sup> Vol. I, p. 177.

<sup>26</sup> *Minutes* (English), fifth meeting, p. 28.

<sup>27</sup> Compare pp. 103-04 and 165 ff. below.

<sup>28</sup> Compare *Minutes* (English), fifth meeting. See also Miller, Vol. I, p. 180.

be deemed to have committed an act of war against all other members of the League. . . .

The beginning of Article 14 (now Article 16) of the Hurst-Miller draft had read:

Should any of the High Contracting Parties be found by the League to have broken or disregarded its covenants under Article 10 [now Article 12], it shall thereby *ipso facto* be deemed to have committed an act of war against all the other members of the League. . . .

In a significant amendment, proposed by Lord Robert Cecil and passed without comment, the words "be found by the League to have broken or disregarded" were altered to "break or disregard." In other words, the original direct obligation on the League to determine the aggressor was purposely eliminated in favor of a wording which leaves responsibility for the determination of aggression unassigned. This lack of precision continues in the final wording of Article 16. This weakness in the Covenant was emphasized during the Sino-Japanese dispute, 1931-32, when the latter member of the League attained far-reaching objectives by military invasion involving serious fighting, yet steadfastly denied that it had been guilty of "resort to war." It may be recalled that at the time of the debates on the Geneva Protocol in 1924, the predominant opinion among League members showed itself unready to accept a hard and fast determination in the definition of aggression.

#### THE SIXTH MEETING AND MANDATES

In the Hurst-Miller draft, as already noted,<sup>20</sup> the text of the mandates article had been confined to a brief statement of general principles. The change to its present lengthy form as Article 22 of the Covenant resulted from an amendment introduced by General Smuts at the sixth meeting of the Commission on the morning

<sup>20</sup> Pp. 65-66 above should be referred to at this point.

of February 8, 1919. In general the Smuts amendment closely followed the text of the resolution on mandates adopted by the Council of Ten on January 30, which in turn owed much to the British Draft Convention Regarding Mandates completed a week earlier.<sup>30</sup> In the latter is found the origin of the important provision of Article 22(7) of the Covenant stipulating that:

In every case of mandate the mandatories shall render to the Council an annual report in reference to the territory committed to its charge.

This stipulation, except that the word "League" was used in place of what is now "Council," was in the Smuts amendment presented to the Commission on February 8. And the Smuts amendment further added a new, and in the event most significant, provision which was the basis of the Permanent Mandates Commission set up under Article 22(9) of the Covenant. It is interesting to compare this clause as tentatively adopted on February 8 and as finally written into the Covenant:

#### SMUTS AMENDMENT

The High Contracting Powers further agree to establish at the seat of the League a mandatory commission to receive and examine the annual reports of the mandatory Powers, and to assist the League in insuring the observance of the terms of all mandates.

#### FINAL COVENANT

A permanent commission shall be constituted to receive and examine the annual reports of the mandatories and to advise the Council on all matters relating to the observance of the mandates.

Since the decision of the Council of Ten on January 30 was binding on the five Great Powers it was inevitable that the Commission should accept the text of the mandates resolution, after some redrafting. But it was the

<sup>30</sup> The text of these two documents is given in Miller, Vol. I, pp. 106-07 and 109-10. Compare also Benjamin Gerig, *The Open Door and the Mandates System*, Chap. IV.

Commission, under British instigation, which wrote into the Covenant the clause providing for a League commission on mandates, whereby the authority of the mandatory Powers in the mandated areas has been definitely circumscribed, and whereby the League has to some extent assumed a definite super-State function so far as the supervision of government in the former German colonies and in the former outlying Turkish provinces is concerned.<sup>31</sup>

An interesting amendment designed to facilitate the eventual independence of the mandated areas was circulated at this meeting by M. Vesnitch. The proposal, the text of which as drafted is translated below, was finally disapproved at the next meeting of the Commission.

The Mandates Commission, whenever it deems the time appropriate, may also suggest that the independence of any people whatsoever should be proclaimed and recognized in view of its eventual admission as a member of the League of Nations.

So far as mandated areas are concerned the purpose of this amendment is of course implicit in the wording of the first two paragraphs of Article 22 of the final Covenant. Measures taken more than a decade later by the British and Iraq governments to secure a separate League membership for the latter territory indicate that

<sup>31</sup> Compare, for instance, the *Report* to the Council of the seventeenth (extraordinary) session of the Permanent Mandates Commission, held at Geneva June 3-21, 1930. This session was devoted exclusively to affairs in Palestine. In the words of the report:

"The [British] Commission of Enquiry sought to establish the degree of responsibility attaching to the Jews and Arabs respectively for both the immediate and the remoter causes of the disturbances.

"The Mandates Commission sees its duty in another light. It is not its business to decide between the two sections of the population which these events have brought into collision, but only to consider the attitude of the mandatory during and before the disturbances. The mandatory Power is alone responsible to the League of Nations for the mandated territory which it administers on the League's behalf, and it is on the observance of the mandate that—*according to the actual terms of the Covenant*—the Commission has to advise the Council." (League Document C. 355.M. 147. 1930.VI.)

the Vesnitch proposal was rightly regarded as superfluous, although in this case it was feared in some quarters that Great Britain sought to substitute a virtual protectorate for the mandatory relationship.

The Treaty of 1930 between Great Britain and Iraq provided in its preamble for abandonment of the British mandate over Iraq as soon as the latter is admitted to League membership, and pledged British support to Iraq's candidacy as the first mandated area to seek admission to the League on the basis of independent statehood. In the autumn of 1931 extensive hearings on the claim of Iraq to independence were held before the Mandates Commission. In a special report to the Council made public on January 5, 1932 the Commission took the somewhat non-committal position that it saw no reason to doubt the mandatory's claim of Iraq's fitness for self-government. The admission of Iraq to League membership, and the establishment of the guarantee of its sovereignty thereby implied, was characterized as a matter wholly within the competence of the Assembly to decide. The "sovereign right" of the Assembly in this respect was reaffirmed by the President of the Council when, on January 28, 1932, a resolution was adopted by the Council declaring itself:

... prepared, in principle, to pronounce the termination of the mandatory regime in Iraq, when that State shall have entered into undertakings before the Council in conformity with the suggestions contained in the report of the Permanent Mandates Commission. . . .

A curious incident at the sixth meeting of the Commission may be noted here, particularly since it was not the only instance during the final drafting of the Covenant in which there were seemingly surreptitious efforts to slip in textual changes of an apparently trivial but perhaps actually momentous character.<sup>32</sup> The resolution

<sup>32</sup> Compare p. 208 below.

of the Council of Ten had specified that the present "C" mandates (Southwest Africa and the former German colonies in the South Pacific) "can be best administered under the laws of the mandatory State as integral portions thereof." While otherwise repeating the text approved by the Council of Ten, the Smuts amendment here inserted the word "*if*" so as to read "as if integral portions thereof." This textual change was immediately spotted by Baron Makino and there was no defense by General Smuts against the Japanese demand that it be eliminated.<sup>33</sup>

The only other important action at this session was adoption of an amendment, presented by Lord Robert Cecil, to the labor article in the Hurst-Miller draft. This amendment provided that there should be established "as part of the organization of the League a permanent [labor] conference and labor office." While the wording was made much more general in Article 23 (a) of the Covenant as finally adopted, there was in the Cecil amendment the germ of the conception of the International Labor Organization *as part of the organization of the League*. This constitutionally subordinate character of the International Labor Organization *vis-à-vis* the League was thereafter maintained.

#### THE SEVENTH MEETING AND ECONOMIC EQUALITY

When the Commission convened for its seventh meeting, on the morning of February 10, 1919, just a week after it was first called together, only three articles of the Hurst-Miller draft remained to be given consideration on first reading. The first of these was the so-called "economic equality" provision, favoring "freedom of transit and just treatment for the commerce of all States members of the League."<sup>34</sup>

<sup>33</sup> Compare Miller, Vol. I, p. 190.

<sup>34</sup> Compare pp. 67-68 above.

Although it was pointed out that this provision would not apply to Germany unless and until she was admitted to League membership, the wording of this article of the Hurst-Miller draft was sharply attacked by the Belgian and French delegates. The phrase "just treatment" was altered to "equitable treatment" to meet the contention that the devastated areas would require special economic consideration during the period of reconstruction. And when M. Hymans protested that this change was inadequate to the circumstances, President Wilson proposed as an addition to the article:

Having in mind, among other things, special arrangements with regard to the necessities of the regions devastated during the war of 1914-18.

In slightly altered language this provision is now the last part of Article 23 (e) of the Covenant. Its temporal wording is one of the phrases which stick like a sore thumb from the text to remind the reader of the anomalous circumstances under which the Constitution of the League was drafted, and of the curious combination of impartial international aspiration and special consideration for the war victors which it embodies. The insertion of the maggot of unilateral privilege into the heart of the League was definitely insisted upon by M. Larnaude at the seventh meeting of the Commission, the English *Minutes* chronicling his remarks as follows:

... The plan of a Covenant was the outcome of the war, and of the condition of distress created in Poland, Belgium and many other countries by Germany. So long as this situation remained unrelieved, we could not talk of "equitable" commerce; the word would not be understood. Throughout a period of uncertain length, it would be just to ask that we be permitted to take restrictive precautions, which would protect us from the invasion of enemy [*sic*] goods.

During the Commission's discussion of this article, from which all the far-reaching economic activity of

the League has sprung, a very interesting elucidation of its intended scope was made by President Wilson. This explanation is equally appropriate to the economic work of the League today. As noted by David Hunter Miller at the time, Mr. Wilson defined the principle involved thus:

Not any restriction on any State in regard to its fiscal policy, no thought of curtailment of right of customs duty, port charges, etc.—in mind that old arrangement of retaliatory tariffs and discriminatory tariffs should be done away with.<sup>35</sup>

In the final Constitution of the League of Nations what are known as the three "Treaty Articles" (numbers 18, 19, and 20) are grouped together, their purport being summarizable as providing that international engagements shall be (1) public; (2) liable to reconsideration, and (3) consonant with the Covenant. As has been pointed out, the present Article 19 was not found in the Hurst-Miller draft. What is now Article 18, providing for the registration of treaties, came before the seventh meeting of the Commission in the following form:

The High Contracting Parties agree that any treaty or international engagement entered into between States members of the League shall be forthwith registered with the Chancellor, and as soon as possible published by him.

Several momentous changes were made in this draft. The word "any" was changed to "every." It was agreed that the article should only apply to future treaties, the word "hereafter" being inserted to give effect to this understanding. On motion of M. Vesnitch the words "by a State member" were substituted for the words "between States members," which has resulted in virtually complete treaty registration at Geneva, since the number of treaties concluded between two nations of

<sup>35</sup> Miller, Vol. I, p. 197.



which neither is a League member is almost negligible.<sup>36</sup> Finally, on motion of President Wilson, there was added to the Hurst-Miller text the words "and that no treaty or international engagement shall be operative until so registered." Later the word "operative" was changed to "binding," but even so it is obvious that the force of the article was greatly strengthened by this amendment.

Article 20 of the final Covenant, providing that treaties must be consonant with the Covenant, remains today in almost the identical wording given to it in the Phillimore plan, whence it was taken over by Colonel House, indorsed by President Wilson, carried on down without change into the Hurst-Miller draft, and then adopted by the Peace Conference Commission on the League of Nations. It had, therefore, been written almost a year before its consideration by the seventh meeting of this Commission, where its implications were for the first time given close scrutiny.

The discussion revealed—and the issue is still very much alive—the important psychological difference between America and Europe on the issue of authority. When M. Larnaudé asked what organ would finally pass on the issue of the consistency of a treaty with the Covenant, President Wilson replied that: "The sanctions of this principle lie in public opinion. If the treaty is discovered to conflict with the general principles laid down in the Covenant, it would be morally impossible to sustain such a treaty."<sup>37</sup> Indeed the entire debate at this point illustrates the importance of the point emphasized by Señor Orestes Ferrara in the introduction to his stimulating study on *L'Amérique et L'Europe*, which may be translated as follows:

<sup>36</sup> In recent years it has been the practise of the United States government to forward all treaties concluded by it to Geneva for *publication*, which in effect is almost the same as registration. Every treaty concluded by the United States with any State member of the League is also registered automatically, under the Vessitch amendment.

<sup>37</sup> *Minutes* (English), seventh meeting, p. 35.

. . . Men of lofty ethics, of very noble spirit, of broad judgment, much broader on other matters than those of any American, do not comprehend, in Europe, that States have no need of force to guarantee each one his rights. Even in this latter period when, as a result of the material and spiritual upheaval of the war, the human mind seems to have been purified by its cruel testing, on two occasions—at the time of the drafting of the League Covenant and more lately for that of the Kellogg Pact—men who, in Europe, accept and disseminate all the audacities of thought have asked, with evident certainty that only simpletons could fail to understand such logic: “Very well: these juridical precepts are quite useful, but—where is the force which will sustain them? Who will guarantee these noble principles?”

The article was finally adopted without amendment, with the European delegates assuming that the Council would in the last analysis determine whether or not future treaties would be consistent with the terms of the Covenant. But the failure to specify this has probably weakened the force of Article 20 for certain European members of the League. For them, broadly speaking,—and evidently for Japan—an obligation does not seem morally binding if there is no authority specifically entrusted with its enforcement. It is that belief, also, which is behind the French insistence that security is not afforded by the League’s provisions to that end so long as these provisions are not backed by tangible force.

The seventh meeting of the Commission also considered certain changes recommended by its subordinate bodies. Of these the most important were the revisions of Article 13 of the Hurst-Miller draft (now Article 15 of the Covenant) as advised by the sub-committee appointed on February 7.<sup>88</sup> British and American opposition to the idea of compulsory arbitration had squashed the Belgian amendment to that end and in its place the sub-committee advised that in the case of refusal by a State to comply with a unanimous report from the

<sup>88</sup> See p. 94 above.

Council, "the Council shall consider what steps can best be taken to give effect to their recommendation." In order to be consistent the sub-committee simultaneously advised the addition of a similar clause to the arbitration article which is now Article 13, providing that in cases where an arbitral award is not carried out in full good faith, "the Executive Council shall consider what steps can best be taken to give effect to the award or the decision."

It was the logical conclusion of the sub-committee that if the Council should be empowered to take action in a case where its unanimous report is flouted it should also be entitled to act in a case where an arbitral award is disregarded. But the peculiar final result was that this prerogative of the Council was maintained in the latter case, being now the last sentence of Article 13(4), while it was eliminated from Article 15, so that paragraph 6 of that article now gives no positive recourse in cases where a unanimous decision of the Council, when the disputants are barred from voting, is disregarded by one of the parties to the dispute. The authority of the Council to secure a conclusive settlement in international disputes, even in cases so clear-cut as to make Council opinion unanimous, was thus severely circumscribed.<sup>39</sup> At the same time, by reason of the provision which is now in Article 13(4), it was made probable that the Council rather than an external arbitral body would be seized of a dispute. It is to be remembered, however, that the World Court was only vaguely visualized at this time and that its later establishment has taken from the Council much of the judicial function at first envisaged for that body.

At the close of the seventh meeting of the Commission the entire text of the Hurst-Miller draft had been exam-

<sup>39</sup> Compare Miller, Vol. I, pp. 192-95. This weakness in the Covenant was clearly demonstrated during the Manchurian dispute of 1931 and subsequent Sino-Japanese difficulties.

ined, in several respects sharply amended, and adopted on first reading. There still remained, however, certain changes to be made before the accepted draft could be presented to a plenary session of the Peace Conference.

#### THE EIGHTH MEETING AND NATIONAL SECURITY

Two new articles were added to the Covenant at the eighth meeting of the Commission, convened on the morning of February 11, 1919. The first of these was what is now Article 19, referring to the reconsideration of obsolete and inequitable treaties.<sup>40</sup> The second, now Article 26(1), made provision for future amendments of the final Covenant, a procedure which had theretofore been neglected. The proposals for both these additions came from the British delegation, and as at first worded would in both cases have given the League clear-cut super-national authority. A comparison of texts will show how carefully the Commission safeguarded the sovereignty of the member States.

In the case of what is now Article 19 this tendency was strengthened not merely by the consideration which M. Kramar summarized in his observation that "if the Body of Delegates were to become the judge of all treaties, it would have powers like those of an international parliament,"<sup>41</sup> but also by the opposition among the European war victors to any step which would seem to render their territorial gains less permanent.

#### ARTICLE 19

##### AS PROPOSED

The Body of Delegates shall make provision for the periodic revision of treaties which have become obsolete

##### AS REVISED <sup>42</sup>

It shall be the right of the Body of Delegates from time to time to advise the reconsideration by the States,

<sup>40</sup> Compare pp. 87-90 above.

<sup>41</sup> *Minutes* (English), eighth meeting, p. 40.

<sup>42</sup> Compare also text in final Covenant.

and of international conditions, the continuance of which may endanger the peace of the world.

members of the League, of treaties which have become inapplicable, and of international conditions, the continuance of which may endanger the peace of the world.

In the case of the article providing for future amendment of the Covenant the changes made by the Commission produced a curious result, apparently unnoticed at the time. As introduced by Lord Robert Cecil the new article ignored the right of a State to decide for itself on the amendment of a treaty to which it is a party, since an amendment to the Covenant could of course result in this international agreement becoming a substantially new treaty. The revision by the eighth meeting of the Commission safeguarded this right by stipulating the circumstances under which amendments to the Covenant should take effect instead of the circumstances under which they should be made. In consequence, the Covenant was drafted without any provision for the procedure of proposing amendments thereto, an omission which was to cause future difficulties.

In the absence of any express provision to the contrary it was later argued that the unanimity rule established in Article 5(1) should apply in voting amendments. The second session of the Assembly, on October 3, 1921, therefore adopted a resolution stipulating that amendments to the Covenant should be "voted by the Assembly on a three-fourths majority, in which there shall be included the votes of all the members of the Council represented at the meeting."<sup>48</sup> This amendment, though not yet formally adopted by the requisite number of member States, is in effect operative for the initiation of amendments. As a matter of fact the few amendments actually made in the Covenant, excepting

<sup>48</sup> *Official Journal*, S. S. No. 6, October 1921, p. 9.

that providing for the composition of the Council, have been of an almost inevitable and non-controversial character.

Although the wording of the British article concerning amendments was radically altered at the eighth meeting of the Commission, the discussion thereon brought forth an extremely interesting "exchange of views" indicating the far-reaching opinion of several of the prominent members of the Commission on the nature of the new international organization. The following excerpt from the *Minutes* merits quotation:

Mr. Larnaude said that the question was whether or not we wanted a league in which the long-standing rules of international law would apply in full force. Were we setting up nothing more than a treaty, or were we indeed making a permanent constitution, creating a real institution higher than States? The Covenant, by analogy, resembled the scheme of the Confederation. This being so, we were on diplomatic ground. But if we were talking about a constitution, we were in the sphere of a super-State.

President Wilson observed that when the nations subscribe to the Covenant, they will clearly be bound by the new text.

Mr. Orlando was of the opinion that a State in the minority would be forced to remain in the League. New laws should be made to accord with new facts.

Mr. Larnaude said that the delegates would be officials whose position was like that of judges who cannot be divested of office at pleasure. They must have the international point of view and a kind of independence.

The change in the Cecil amendment noted below failed to protect the sovereignty of a country represented in the Assembly but not in the Council and unwilling to ratify the proposed amendment. It was to meet this contingency that Article 26(2) of the Covenant was eventually inserted, giving a State in such circumstance the option of ceasing to be a member of the League.<sup>44</sup>

<sup>44</sup> See p. 197 below.

## ARTICLE 26

## AS PROPOSED

Amendments to the Constitution and functions of the League can be made by a unanimous vote of the Executive Council confirmed by a majority of the Body of Delegates.

AS REVISED <sup>45</sup>

Amendments to this Covenant will be effective when ratified by the States whose representatives compose the Executive Council together with a three-fourths majority of the States whose representatives compose the Body of Delegates.

The eighth meeting also saw formal introduction before the Commission of an issue which has not yet ceased to agitate the League and the problem of the relations of the United States thereto. This was the French insistence upon the development of an international military control and the creation of an international "force" adequate to compel respect for the pledges of the Covenant. The argument that the League must establish its members in a position of *sécurité nationale*, with the implication that otherwise each State must be the sole judge of its armament requirements, was strongly stressed by the French delegates at this meeting. From that day to this the French position has not deviated from the thesis that if the League does not absolutely insure the security of its members, those members are not justified in trusting the efficacy of the Covenant as a way of permanent peace.

In all, three amendments to the Covenant in its then existing condition were introduced by the French delegates at the eighth meeting of the Commission, all of them, as M. Bourgeois pointed out, being designed to allay *inquiétude* in the Senate and Chamber of Deputies of his country.<sup>46</sup> The first of these qualified the conditions of membership in the League so as to make "effec-

<sup>45</sup> Compare also text in final Covenant.

<sup>46</sup> Compare *Minutes* (French), eighth meeting.

tive guarantees" of its intention to respect the Covenant a prerequisite for the admission of a new State and so as to emphasize the obligation of the new member to conform to the League's regulations on armaments. The essence of this amendment, which strengthened somewhat the super-governmental aspect of the new international association, was accepted in principle by the Commission and now finds place in the second paragraph of Article 1 of the Covenant.

The second French amendment would have made far-reaching changes in the disarmament article of the Hurst-Miller draft, which was Article 8 thereof as it is now Article 8 of the final Covenant. This amendment was in two distinct parts, the less important providing that in formulating plans for armament reduction the Council should observe:

. . . due regard, in determining the number of troops, not only to the relative strength of the different States, but also to the risks to which they are exposed by their geographical situation and the nature of their frontiers.

The above provision, in modified form, came through to form the qualification in Article 8(2) of the final Covenant. The other, and much more controversial, addition to Article 8 proposed by the French provided that the Council:

. . . will establish an international control of troops and armaments, and the High Contracting Parties agree to submit themselves to it in all good faith. It [the Council] will fix the conditions under which the permanent existence and organization of an international force may be assured.<sup>47</sup>

In spite of the determined effort by the French delegates to insert the international armament control and

<sup>47</sup> The French text of this amendment read: "Il instituera un contrôle international des effectifs et des armements et les Hautes Parties Contractantes s'engagent à s'y soumettre en toute bonne foi. Il déterminera les conditions dans lesquelles doivent être assurées d'une façon permanente l'existence et l'organisation de la force internationale."



international army provisions into the Covenant—efforts by no means confined to this meeting of the Commission—they were never approved by the Commission. President Wilson and Lord Robert Cecil opposed them from the outset, both maintaining that their respective countries would not accept a league control of such far-reaching nature, while Mr. Wilson further argued that for the United States the French proposals would be unconstitutional, and that the suggestion seemed to him a substitution of “international militarism for national militarism.” To this M. Bourgeois responded tartly that France was not asking others to accept any external control which she would not submit to herself, that without some practical provision to guarantee the phrases of the Covenant the League “will be only a dangerous facade,” and that: “*l’opposition aux principes essentiels de la Société des Nations ne vient donc pas de nous.*”<sup>48</sup>

In this debate, in short, were sharply summarized the conflicting Anglo-Saxon and French philosophies regarding the character of the League which on many major occasions in its history have flamed out in open opposition and have been harmonized only by often precarious compromise. The consistency with which successive French governments have upheld the position taken at this early stage must be appreciated. Thus M. Briand, as president of the Council during the emergency meetings held on the Manchurian dispute of 1931, took the position that the League must endeavor to enforce its authority at all costs, even though a section of the Paris press loudly argued that France is uninterested in Manchuria and that to oppose the Japanese insistence on protecting with force rights gained by imposed treaties, was to indorse a dangerous precedent. The French government did not emphasize, as it might have done, that the Japanese campaign in China scarcely justified Anglo-

<sup>48</sup> Compare *Minutes* (French and English), eighth meeting.

Saxon faith in "the sanctions of public opinion" as a force in itself potent to prevent aggression.

In the controversy at the Commission's eighth meeting the eventual compromise, as so often in later history, was suggested by the British. It was Lord Robert Cecil who here suggested that something of the French demand for international disarmament control or supervision could be met by the introduction of a formula reading: "A permanent commission shall be established to advise the League of Nations on naval and military questions." From this came Article 9 of the final Covenant and the establishment of the League's Permanent Advisory Commission on Disarmament.

The third French amendment introduced at the eighth meeting would have applied sanctions to enforce a unanimous opinion of the Council on a dispute submitted to it. This was very similar to the Belgian proposal already referred to and, while it was referred to the drafting committee, it found no place in the final Covenant.

#### THE FEBRUARY DRAFTING COMMITTEE

When the eighth meeting of the Commission adjourned in the early afternoon of February 11 it had completed the first reading of the Hurst-Miller draft covenant, containing twenty-two articles, and a drafting committee, composed of Cecil, Larnaude, Veniselos, and Vesnitch, had been appointed to revise the whole text in accordance with the changes agreed upon. This revision was ready for the Commission when it resumed its sittings on February 13, holding its ninth meeting in the morning and its tenth meeting in the afternoon of that day. The draft as thus adopted was presented, simply as a matter of information, to the plenary session of the Peace Conference held on February 14. Following this President Wilson left for the United States and no further

sessions of the Commission were held until after his return to Paris on March 14.

As the Covenant returned to the Commission from the drafting committee, it contained twenty-seven articles, one more than was in the final document. One of these five additional articles resulted from rearrangement in the initial sections of the Hurst-Miller draft, as revised in the early meetings of the Commission, and the other four were new articles. They were those providing for the reconsideration of treaties; for the procedure necessary to secure ratification of amendments to the Covenant; for the establishment of a permanent commission to advise the League on military and naval questions; and for the placing of international bureaus under the control of the League. As later revised these articles became numbers 19, 26(1), 9, and 24 of the present Covenant.

While the changes made by the drafting committee were largely confined to classification and simplification, as distinct from vital alteration, of the text referred to it, its work was not merely one of minor revision. The committee, for instance, recommended omission of the article which would have pledged all League members to respect religious freedom, a recommendation which was later followed by the Commission. It also gave consideration to a number of important amendments presented by the British delegation, including a proposal for a "representative assembly" as a League organ additional to the Council and Body of Delegates, as the present Assembly was still known at this time. This "third chamber" proposition, which has not been without influence in League history, is discussed at greater length in the next section of this chapter. The provision for the placing of international bureaus under the control of the League was among these British amendments, having been carried over from earlier British drafts. That principle had also been indorsed by Article 8 of the Italian

draft scheme, and with this backing was adopted by the drafting committee as a new article in the Covenant.

Of greater importance was the further discussion, in the drafting committee, concerning the French endeavor to establish an international military force under League control. The committee adopted as an article of the Covenant the compromise suggestion for the establishment of a permanent advisory commission on military and naval matters, but M. Larnaude did not surrender on the major issue. The frankness of the debate is shown by the following extract from the diary of Mr. David Hunter Miller, who attended the meeting of the drafting committee on February 12:

The committee considered and went through the draft during the morning but reached difficulties with the French, who proposed amendments regarding an international armed force. Finally, Cecil, saying that he was speaking very frankly but in private, said: that America had nothing to gain from the League of Nations; that she could let European affairs go and take care of her own; the offer that was made by America for support was practically a present to France; and that to a certain but to a lesser extent this was the position of Great Britain which, while vitally interested in Continental affairs, yet to a certain extent could stand apart. Accordingly, he wished to say very frankly to the French delegates that in his view they were saying to America, and to a lesser extent to Great Britain, that because more was not offered they would not take the gift that was at hand, and he warned them very frankly that the alternative offer which we have made, if the League of Nations was not successful, was an alliance between Great Britain and the United States. He asked them to consider this before they made any final conclusion. At this the meeting adjourned for lunch.

It was the drafting committee which substituted the title of "secretary-general" for that of "chancellor," as this prospective officer had theretofore been styled, and its report "contemplated the possibility of locating" the Seat of the League at Geneva, though final choice of this

city over the strong candidacy of Brussels was not made until later. Also worthy of note was this committee's elimination of the specification of the ambassadors or ministers at the Seat of the League as national representatives in the Body of Delegates (Assembly). Without this change Geneva, not being a national capital, could not have been chosen as headquarters of the League. But the instigation for the alteration had come for another reason from the British delegation, which foresaw difficulties for the separate membership of the dominions in a limitation of delegates to national diplomatic officers.

#### THE NINTH MEETING AND A POPULAR ASSEMBLY

With the Covenant as reported back from the drafting committee before it, the Peace Conference Commission on the League of Nations convened its ninth meeting on the morning of February 13. A formal procedure was adopted for this second reading, whereby the articles were read seriatim, with votes taken on all further amendments offered.

At the outset of the meeting a discordant note was introduced by the French delegates, who put forward an amendment whereby the beginning of the preamble would have condemned those responsible for the war and characterized the League as a "development" of the work of The Hague Peace Conferences. The first part of this amendment was withdrawn by its sponsors after Senhor Batalha-Reis had condemned it as out of harmony with the basic idea of the League.<sup>49</sup> And the reference to The Hague Conferences was voted down after it was pointed out that to identify the new international organ-

<sup>49</sup> "The League of Nations is a work of union and concord preparing a future of peace between peoples. I would not like to see its organic Act begin with words of condemnation and punishment. How could the nations which remained neutral during the war accept the preamble of the Covenant if it were thus drawn up?"

ization as a mere continuation of this earlier effort for peace would be highly misleading.

The next controversial subject to arise was the resolution proposing a third chamber in the League organization, introduced by General Smuts as an amendment to the article dealing with the composition and functions of the Body of Delegates (now the Assembly). Disagreement within the British delegation on the desirability of this proposal had resulted in a contraction of the original plan,<sup>50</sup> which specified that the proposed organ should be "elected by the legislative bodies of all States members of the League" and that it should "meet regularly at the Seat of the League for the purpose of examining and advising upon the policy and action of the Body of Delegates and the Executive Council and of all international organs placed under their supervision or control." As sponsored by General Smuts in the ninth meeting of the Commission the modified proposal read:

At least once in four years, an extraordinary meeting of the Body of Delegates shall be held, which shall include representatives of national parliaments and other bodies representative of public opinion, in accordance with a scheme to be drawn up by the Executive Council.

The move to establish within the *cadre* of the League a deliberative body representative of popular rather than official opinion was strongly marked during the formative period of the Covenant. For instance, the International Labor and Socialist Conference held at Berne in February 1919 had resolved that representation in the League organs should be "by delegates from the parliaments representing all parties therein, ensuring thus, not an alliance of cabinets or governments, but a union of peoples." The Smuts proposal was rejected by the ninth meeting of the Commission and the idea of the separate "representative assembly" faded out. Its influence, how-

<sup>50</sup> For complete text of this see Miller, Vol. I, p. 218.

ever, can be traced both in the practise of various governments in including opposition spokesmen or non-political leaders in their Assembly delegations<sup>51</sup> and in the attention given by the Assembly to the annual resolutions of the Congress of the Federation of League of Nations Societies. The resolutions of this unofficial, but influential, organization are regularly printed in the *Journal* of the Assembly following its annual congress, and in a sense the Federation, which groups together the national League of Nations associations of over forty countries and maintains permanent headquarters at Brussels, provides in its yearly conference the third chamber which was desired by many in 1919.

A by-product of the debate on the Smuts proposal was the insertion in the Covenant of what is now the last paragraph of Article 3, providing that "at meetings of the Assembly, each member of the League shall have one vote, and may have not more than three representatives." As will be shown in subsequent consideration of the Assembly, the limitation of official representation to three members for each country is much vitiated in practise by the attendance of alternate delegates and technical advisers. These supplementary figures have enabled various governments to include in their Assembly delegations representatives who are not members of the national administration in power. But the point raised by M. Bourgeois in defeating the Smuts proposal has invariably governed the selection of its leading Assembly delegates by each member State: "I believe that if we desire to give authority to the decisions of the Body of Delegates, it follows that each government . . . should be represented by somebody who represents it in reality."<sup>52</sup>

The ninth meeting of the Commission saw final assent to the plan for representation of four "other States" on

<sup>51</sup> Compare pp. 579-81 below.

<sup>52</sup> *Minutes* (French), ninth meeting.

the Council, in addition to the permanent representation of the five Great Powers. The naming in the first instance of these four elective members was in theory left to the Peace Conference, though actually somewhat casual procedure was used in the selection of Belgium, Brazil, Greece, and Spain, the four States eventually chosen as the first non-permanent Council members.<sup>53</sup> A slight change in wording was approved to make clear beyond dispute that the four countries only, and not their spokesmen on the Council, should in future be chosen by the Assembly, thus reserving to the elected States the right to name their own representatives, as was from the outset understood to be the right of the Great Powers.

Inferentially, therefore, the Council in even greater degree than the Assembly was from this time constituted as an inter-governmental organ, whose individual members would change with alterations of administrations in the States represented. In this connection it is noteworthy that the Commission failed to give any consideration to the question of a revolutionary change of government during the tenure of an elected Council member. In such cases, which have been by no means infrequent, the new administration commonly changes its representative on the Council along with, or even before, the rest of the diplomatic corps. Membership on the Council, in other words, may in effect be an extension of the spoils system for governments with representation on that body. In the case of elected members the Assembly preserves a certain check, being able to replace an obviously unrepresentative government when its statutory three-year term expires. But no such check exists in the case of the permanent Council members.<sup>54</sup>

<sup>53</sup> Compare p. 351 below.

<sup>54</sup> Thus Italy was given a permanent Council seat when still under a parliamentary form of government, but has retained it without question since the rise of Fascism, even though this means that her spokesmen on the



Another illustration of failure to anticipate all contingencies was given at this meeting of the Commission when final adoption was made of the clause which is now paragraph 3 of Article 5:

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

Although the Council met for the first time in January 1920 the first session of the Assembly was not held until November of that year, less than four months before Mr. Harding replaced Mr. Wilson in the White House. If the convening of the Assembly had by some mischance been delayed until President Harding had taken office, and if the latter had merely refrained from summoning the Assembly, this vital League organ could not have been legally constituted.

The question of whether any neutral Powers should come in as "original members of the League" was raised at the close of the ninth meeting of the Commission and answered affirmatively. After a lengthy discussion, in which M. Larnaude, with an eye on the Rhine, insisted that "the essential matter is to maintain severe conditions for nations which do not inspire confidence,"<sup>55</sup> a formula proposed by Lord Robert Cecil was adopted. This provided for the naming in a protocol to the Covenant, eventually termed an "annex," of certain neutral States which should be invited to accede to the Covenant and thereby become original members of the League. As finally determined the States so invited were the thirteen listed in the footnote on page 81.

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Council must be *persona grata* to the Fascist regime. Similarly, one of the first acts of the Spanish Republican government was to replace a monarchist sympathizer by the Foreign Minister of the new regime as Spain's representative on the Council.

<sup>55</sup> *Minutes* (French), ninth meeting.

## THE TENTH MEETING AND ENFORCEMENT OF PEACE

The tenth meeting of the Commission, on the afternoon of February 13, opened with another protracted debate on the French amendments providing for an international military control commission and an international general staff, though in both cases the wording of the amendments had been somewhat modified from the form in which they were first introduced.<sup>56</sup> The discussion was in places almost acrimonious and indicated distrust of Germany as an important motive behind the French requests. M. Kramar of Czechoslovakia, after observing that "I know the Germans well, and I know that one can have no confidence in them,"<sup>57</sup> urged that a League military control should be established for the Reich, but not for the Allied nations. From this thesis, however, the French delegates dissociated themselves, saying that all nations should be subjected to the same requirement. On a vote the French amendment for control was rejected twelve to three, only the Czechoslovak delegate siding with those of France. As a measure of conciliation Lord Robert Cecil suggested an extension of the advisory, as contrasted with the supervisory, powers of the permanent Commission already decided upon, which was approved.<sup>58</sup> Comparative texts show the development of this article, in the effort to meet the French viewpoint half-way, from the wording used by the drafting committee:

## DEVELOPMENT OF ARTICLE 9

## DRAFTING COMMITTEE

A permanent commission shall be constituted to advise the League on military and naval questions.

## CECIL AMENDMENT

A permanent commission shall be constituted to advise the League on the execution of the provisions of Article 8 and on military and naval questions generally.

## FINAL COVENANT

A permanent commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

<sup>56</sup> See p. 109 above. <sup>57</sup> Quoted by Miller, Vol. I, p. 247. <sup>58</sup> See p. 111 above.

This article as amended by Cecil was held by a majority of the Commission to be an adequate substitute for the French effort to create an international army, which when the tenth meeting of the Commission assembled had been moderated to the following proposed amendment:

A permanent body shall be created in order to plan and prepare the military and naval program by which obligations imposed upon the High Contracting Parties by the present Covenant shall be enforced, and in order to give immediate effect to it in any urgent situation that may arise.<sup>59</sup>

This proposal, the French delegates argued, should be regarded "as a happy medium" between their original plan for a levy of national military contingents under League orders and the "extremely vague" Commission advocated by Lord Robert Cecil. While the amendment was rejected<sup>60</sup> it resulted in a clear definition of the French position in behalf of the use of international police action to insure peace, the following statement by M. Larnaude in particular deserving quotation:

One of the conditions necessary for the League of Nations to be able to impose peace, is that the whole world knows that it has the means to impose it and to impose it at once. There is no other way to enforce peace but by force intelligently placed at the disposal of the League of Nations.<sup>61</sup>

On this position, very similar to that inherent in the earlier American program for a "league to enforce peace," the French government took its stand during the drafting of the Covenant. To this position, in spite of Anglo-American opposition to the idea of international police action against an aggressor, every French

<sup>59</sup> *Minutes* (English), tenth meeting, p. 60.

<sup>60</sup> This amendment was reintroduced by the French at a later meeting of the Commission. See pp. 149-51 below.

<sup>61</sup> Quoted by Miller, Vol. I, p. 256. See also *Minutes* (English), tenth meeting, p. 61.

government since 1919 has consistently adhered. The following conclusion from the French memorandum on disarmament, forwarded to the Secretary-General on July 15, 1931, is only a continuation of the thesis of M. Larnaude, advanced twelve and one-half years earlier, and quoted above:

... The Government of the Republic are prepared to extend their unqualified collaboration to any system for the general organization of peace which, involving definite pledges of effective mutual assistance in case of aggression, would enable each State, as soon as the nature and promptness of this assistance has been specified, to determine the further reductions thus rendered possible.<sup>62</sup>

It may be noted that in their vain efforts to write into the Covenant measures calculated to enable the League "to impose peace" the French delegates took occasion to refer somewhat sharply to the monopoly exercised by the Anglo-American delegations in the earlier drafting. In the words of M. Bourgeois: "Please note that we are in a somewhat delicate situation, for we are always in the position of discussing a text that was never our own. We can act only by amending the text proposed by the Chair, and that gives our interruptions an aspect that I truly regret. . . ." <sup>63</sup>

It is also useful to realize that at this important meeting of the Commission the issue of whether or not the League should exercise an international military control came near to creating an impasse in the drafting of the Covenant. There was, contemporaneously, no doubt of the depth of the cleavage between the French position

<sup>62</sup> *Official Journal*, August 1931, p. 1582. The concrete proposals "for the creation of a preventive and punitive international force," made to the World Disarmament Conference by the French government on February 5, 1932, were only a further development of this thesis. For text of these proposals see League Document: Conf. D. 56. 1932.

<sup>63</sup> Quoted by Miller, Vol. I, p. 246. See also *Minutes* (English), tenth meeting, p. 59.

on the one hand and that of the Anglo-Saxon delegations on the other. So acute was the state of feeling that, before the vote which defeated the second French amendment was taken, M. Larnaude felt it desirable to state:

. . . Even if you reject our motion, we shall none the less remain good friends, and we shall none the less continue our participation in the common work.<sup>64</sup>

Although the British and American delegates took the lead in thwarting the French effort to create a machinery which would make League sanctions effective, they rather illogically made no criticism whatsoever, in this second reading, of the very drastic system of sanctions established by Articles 16 and 17 of the Covenant. Indeed when Baron Makino inquired, relative to Article 16, whether the suppression of all private intercourse between individuals were contemplated, Lord Robert Cecil, as chairman, replied: "Experience with the blockade has demonstrated the necessity of putting an end to relations of every kind with a blockaded country."<sup>65</sup> It is not difficult to understand the annoyance caused the French delegates by the inclusion in the Covenant of provisions for exceedingly rigorous and imperative sanctions, when coupled with the careful excision of phraseology intended to make the application of these sanctions effective.

With one exception there was no further discussion of significance during the completion of the second reading of the draft covenant at this tenth meeting of the Commission. This exception lay in the effort of the Japanese delegation to insert a "racial equality" clause in the article of the draft which would have made "The High Contracting Parties agree that they will not pro-

<sup>64</sup> The same.

<sup>65</sup> *Minutes* (English), tenth meeting, p. 62.

hibit or interfere with the free exercise of any creed, religion or belief whose practices are not inconsistent with public order or public morals . . .," an article which President Wilson had been anxious to have included in the final Covenant. To this Baron Makino, suggesting that the doctrine of racial equality among League members was implied by the doctrine of common action to enforce international obligations, moved the addition of the following clause:

The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord, as soon as possible, to all alien nationals of States members of the League, equal and just treatment in every respect, making no distinction either in law or fact, on account of their race or nationality.<sup>66</sup>

The implications of this amendment for countries with racial restrictions in their immigration and land laws were, of course, exceedingly far reaching. The Commission, at its tenth meeting, showed marked unwillingness to write the Japanese amendment into the Covenant. And a by-product of this attitude was the elimination of President Wilson's "religious equality" article. There was much logic in Baron Makino's comment that "matters of religion and race could go well together." The difficulty was met by letting them disappear from the Covenant together, though the issue was again raised by Japan at the final meeting of the Commission.<sup>67</sup>

With the "religious equality" article omitted, the Covenant of twenty-six articles, the same in number but not identical in substance with its final form, was reported back to the Peace Conference as adopted on second reading by its Commission on the League of Nations. More than five weeks, by no means static so

<sup>66</sup> The statement made by Baron Makino in presenting this amendment appears in full in the *Minutes* (English), tenth meeting, pp. 63-64.

<sup>67</sup> See pp. 197-99 below.

far as the eventual crystallization of the Covenant was concerned, were to pass before the Commission again assembled in plenary session on March 22. During this period the draft covenant of February 14 rested undisturbed with the Bureau of the Peace Conference, awaiting such further revisions as official and public criticism, from every source, would seem to render advisable.

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## CHAPTER IV

### CRITICISMS AND THEIR CONSEQUENCES

Just as Anglo-American accord on a single draft covenant—the Hurst-Miller draft—had been considered an indispensable preliminary to the early meetings of the Peace Conference Commission, so was a further agreement between President Wilson and Lord Robert Cecil deemed necessary before the revisions shown to be desirable during the period from February 14 to March 22 were formally submitted to the full Commission for incorporation in the final Covenant. Once secured, harmonious and co-operative action between the British and American delegations was steadfastly maintained as the basis on which the Covenant was adopted and written into the Treaty of Peace.

President Wilson returned to Paris on March 14. He brought with him, among other American criticisms of the draft of February 14, the famous "Six Points" deemed by Senator Hitchcock, the Democratic floor leader, as necessary for incorporation in the Covenant in order to secure Senate approval. Mr. Hitchcock's letter of March 4 to the President, setting down these six desired revisions, may be quoted:

A number of Republican senators who signed Lodge's manifesto on the League of Nations Constitution will, in my opinion, vote for it nevertheless if it is a part of the peace treaty. A still larger number will give it support if certain amendments are made. The following I would mention as likely to influence votes in the order given:

First, a reservation to each High Contracting Party of its exclusive control over domestic subjects.

Second, a reservation of the Monroe Doctrine.

Third, some provision by which a member of the League can, on proper notice, withdraw from membership.



Fourth, the settlement of the ambiguity in Article 15.

Fifth, the insertion on the next to the last line of first paragraph of Article 8, after the word "adopted" of the words "by the several governments."

Sixth, the definite assurance that it is optional with a nation to accept or reject the burdens of a mandatory.<sup>1</sup>

These revisions, supported in whole or in part by suggestions which came contemporaneously from former President Taft, Elihu Root, and other Republican leaders, composed the alterations which Mr. Wilson indorsed in the renewed Anglo-American discussions. In order to meet all honest domestic criticism of the Covenant he "accepted the proposed changes not only in substance, but generally in their very language."<sup>2</sup> There were, however, a number of important British amendments which had also been drafted during the five weeks of reconsideration. Both sets of proposed changes were made the subject of detailed discussion between President Wilson, Lord Robert Cecil, Colonel House, and Mr. David Hunter Miller, on the evening of March 18.

#### ANGLO-AMERICAN CONFERENCE OF MARCH 18

Of the changes then suggested by Cecil which found their way into the final Covenant the most important was an alteration in the preamble whereby Germany was made to accept the Constitution of the League of Nations prior to becoming a member State. For the previous wording, whereby only "the Powers signatory to this Covenant" adopted the Constitution of the League, was substituted "The High Contracting Parties agree to the following Covenant as the Constitution of the League of Nations." As a party to the Treaty of

<sup>1</sup> These reservations met most of the tangible criticisms voiced by Senator Knox in his Senate speech of March 1, 1919. For the text of this extravagant attack on the draft covenant of February 14 see *Congressional Record*, Vol. 57, Part 5, pp. 4687 ff.

<sup>2</sup> David Hunter Miller, *The Drafting of the Covenant*, Vol. I, p. 276.

Versailles of which the Covenant became an integral part Germany was thus made to accept all the provisions of that document without at first possessing any of the privileges of League membership, a condition which was not without influence in forwarding the case in Germany for that country's entrance.

This bit of diplomatic *finesse* caused elimination of the phrase "High Contracting Parties" where previously used in the draft covenant in the sense of League members. Now that "High Contracting Parties" was understood to mean signatories of the Treaty of Peace instead of signatories of the Covenant alone, the term "States members of the League" was substituted for it in the body of the Covenant. This in turn led to later difficulties regarding the status of India and to less extent that of the British dominions, which while "members of the League" could not in 1919 have been correctly designated as States. In due course the qualifying word "States" was dropped, leaving the form as in the present Covenant. The incident shows how, in the final stages of the drafting of the Covenant, every change of significance was likely to bring others in its train. For that reason alone the responsible delegates at Paris were forced to oppose many of the almost countless suggestions, wise and unwise, which came in from all quarters after the publication of the draft of February 14.

As counterpart to the provision calculated to make Germany indorse the League without possessing the privileges of membership, a clause was added at Cecil's instigation anticipating eventual permanent Council membership for Germany. This clause, which with some change in wording became the first part of paragraph 2 of Article 4 of the final Covenant, was presented by Lord Robert Cecil in the following form:

The Executive Council may, subject to the approval of the majority of the Body of Delegates, co-opt on to the Council

representatives of States other than those specified above [United States, British Empire, France, Italy, and Japan].

In introducing this amendment Cecil observed that he was thinking of the future participation of Germany and even of Russia.<sup>3</sup> The use of the peculiarly English verb "co-opt" is interesting as illustrative of Cecil's opinion that the Great Powers should dominate the Council, and should therefore be allowed on their own initiative to add to their number as seemed to them desirable. It is significant, therefore, that in the final form of Article 4(2) of the Covenant the provision for adding permanent members to the Council was balanced by a provision for the increase of elected non-permanent members, and that Cecil's wording emphasizing the prerogative of the Council in the matter was reversed so as to read:

With the approval of the majority of the Assembly, the Council may name additional members of the League whose representatives shall always be members of the Council. . . .

Senator Hitchcock's first revision—"a reservation to each High Contracting Party of its exclusive control over domestic subjects"—was at least partially met by Cecil's suggestion and Wilson's support of an amendment specifying the unanimity rule in decisions taken by the Assembly and Council. This amendment is now Article 5(1) of the Covenant. The fifth of the Hitchcock reservations, however, was textually incorporated at this Anglo-American conference by insertion in Article 8 of the four italicized words in the sentence: "These limits [to national armaments], when adopted *by the several governments*, shall not be exceeded without the permission of the Executive Council." This qualification, which was always understood, stands today in the Hitchcock wording in Article 8(4) of the final Covenant.

<sup>3</sup> Compare Miller, Vol. I, pp. 284-85.

Without giving it his personal support Lord Robert Cecil at this meeting presented a memorandum prepared by the British Admiralty sharply criticizing the disarmament provisions of Article 8, on the grounds that: "The introduction at the present stage of proposals for the limitation of armaments, before the League of Nations has established its power to afford security to its members, may delay rather than advance the reduction of armaments since many intricate and delicate questions, the solution of which should preferably await an atmosphere of security, will be involved."

As a result of this memorandum Cecil suggested a softening of the provision whereby, once international disarmament plans had been established, the agreed limits "shall not be exceeded without the permission of the Executive Council," as was the wording in the draft of February 14. For the words "without the permission of" Cecil proposed "without notice to." On objection from President Wilson this extremely vitiating amendment was withdrawn. The wording finally adopted, and now found in Article 8(4) of the Covenant, provides that the agreed limits "shall not be exceeded without the concurrence of the Council." Substitution of the rather vague word "concurrence" for the precise and unequivocal term "permission" therefore resulted from the British Admiralty protest, which was akin to the French official position in its thesis that there can be no disarmament without security, but argued from that thesis that the Covenant should be weakened instead of strengthened, as the French demanded.

Mr. Wilson also successfully voiced opposition, though in this case probably less happily for the welfare of the League, to a last effort by Cecil to restore the balance between the guarantee of territorial integrity and the qualifying provision for reconsideration by the League of treaty settlements. The separation into two articles (10 and 19) of what had originally been a single well-

proportioned article has already been discussed in detail.<sup>4</sup> At the meeting on March 18, the British spokesman proposed the amendment of Article 10 by the insertion of the clause italicized in the text below. But President Wilson let slip this opportunity to reunite the original parts of the Covenant's most controversial article, saying that this was the article on which the French relied most, and intimating that it would be a tactical mistake to modify the guarantee clause.<sup>5</sup> If Cecil's point had been carried the article would have read:

The States members of the League undertake, *subject to the provisions of Article 22 [now Article 19],* to respect and preserve as against external aggression the territorial integrity and existing political independence of all States members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Executive Council shall advise upon the means by which this obligation shall be fulfilled.

The purpose of this amendment was to make the League guarantee of post-war territorial arrangements clearly dependent upon a League authority in respect to the revision of these arrangements. It should be emphasized that Wilson's failure to support the move was not due to any opposition to establishing this check and balance. Indeed, in his opening address at the plenary session of the Peace Conference, on January 25, 1919, the President of the United States went squarely on record in favor of giving the League power to revise the settlements of the Treaty of Versailles, saying:

We have assembled for two purposes—to make the present settlements which have been rendered necessary by this war, and also to secure the peace of the world, not only by the present settlements but by the arrangements we shall make in this conference for its maintenance. The League of Nations seems to me to be necessary for both of these purposes. There are many complicated questions connected with the present settlements which, perhaps, cannot be successfully worked out to

<sup>4</sup> See, for example, pp. 87-90 above.

<sup>5</sup> Compare Miller, Vol. I, p. 289.

an ultimate issue by the decisions we shall arrive at here. I can easily conceive that many of these settlements will need subsequent reconsideration; that many of the decisions we shall make will need subsequent alterations in some degree. . . . It is therefore necessary that we should set up some machinery by which the work of this conference should be rendered complete. We have assembled here for the purpose of doing very much more than making the present settlement. . . . Settlements may be temporary, but the actions of the nations in the interests of peace and justice must be permanent. We can set up permanent processes. We may not be able to set up permanent decisions. . . .

Two amendments making changes which were textually slight, but of very considerable importance in strengthening the powers of the League, were adopted at Cecil's behest by this informal Anglo-American conference. They revised Articles 11(1) and 14 of the draft of February 14, both of these articles carrying the same numeration into the final Covenant. The significance of the changes made is apparent from a comparison of the texts:

#### ARTICLE 11(1)

##### FEB. 14 DRAFT

Any war or threat of war, whether immediately affecting any of the High Contracting Parties or not, is hereby declared a matter of concern to the League, and the High Contracting Parties reserve the right to take any action that may be deemed wise and effectual to safeguard the peace of nations.

##### CECIL-WILSON AGREEMENT OF MARCH 18

Any war or threat of war, whether immediately affecting any of the States members of the League or not, is hereby declared a matter of concern to the League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations.

##### FINAL COVENANT

Any war or threat of war, whether immediately affecting any of the members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any member of the League forthwith summon a meeting of the Council.

## ARTICLE 14

## FIG. 14 DRAFT

The Executive Council shall formulate plans for the establishment of a permanent court of international justice and this court shall, when established, be competent to hear and determine any matter which the parties recognize as suitable for submission to it for arbitration under the foregoing article.

## CECIL-WILSON AGREEMENT OF MARCH 18

The Executive Council shall formulate plans for the establishment of a permanent court of international justice and this court shall, when established, be competent to hear and determine any matter which the parties recognize as suitable for submission to it for arbitration under the foregoing article, and also any issue referred to it by the Executive Council or Body of Delegates.

## FINAL COVENANT

The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a permanent court of international justice. The court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

By substitution of the words "shall take" for "reserve the right to take," the revision of Article 11 made action to prevent war obligatory for the League and at a stroke altered the heretofore insipid nature of the article so as to make it one of the most vital in the entire Covenant. Similarly, Cecil's revision of Article 14 for the first time introduced into the Covenant the basis on which the World Court's present function of rendering advisory opinions is founded. In Cecil's wording the article, as agreed to by President Wilson on March 18, could be said to intimate a power of compulsory arbitration for the Court. This overstatement, as shown by the parallel texts above, was later clarified, but the organic connection between Court and League, as strengthened by Cecil's amendment, remained.

## COMPLIANCE WITH REPUBLICAN OBJECTIONS

The "ambiguity" in Article 15, mentioned in Senator Hitchcock's letter as the fourth of the points on which amendment was desirable to allay reasonable opposition

to the League in the United States, referred to the proposed procedure in a case where the Council would be unanimous in its report on a dispute of which it was seized, but where the recommendation might be unsatisfactory to both parties to the dispute. This part of Article 15 had earlier caused much difficulty to the Commission on the League of Nations. The first problem envisaged had been the case in which only one of the parties to the dispute would be dissatisfied with a Council report made unanimously, of course excepting the parties to the dispute themselves. The Belgian plan for solving this probable contingency had been turned down as savoring too strongly of compulsory arbitration for British and American tastes. Later it was felt that the situation would be adequately met by asking the Council to propose coercive measures if a party to the dispute refused to comply with the unanimous recommendation.<sup>6</sup> Accordingly the wording of this part of Article 15 in the draft of February 14 had come to read as follows, with the phraseology added by the Commission at its seventh meeting italicized:

. . . If the report is unanimously agreed to by the members of the Council other than the parties to the dispute, the High Contracting Parties agree that they will not go to war with any party which complies with the recommendation, *and that, if any party shall refuse so to comply, the Council shall propose the measures necessary to give effect to the recommendations.* . . .

The theoretical eventuality of *both* parties to the dispute being dissatisfied with a unanimous Council report thereon had therefore not been considered by the Commission, and appears to have escaped attention until it was raised by American critics of the Covenant, who also argued that the Council would be given *carte blanche* by empowering it to propose "the measures

<sup>6</sup> Compare above, pp. 93 and 103-04.



necessary.”<sup>7</sup> To meet this objection President Wilson proposed that the section italicized above be deleted from the Covenant, preferring this course to an attempt by Lord Robert Cecil to meet the problem by redrafting.<sup>8</sup> This omission has of course left uncertain what course, if any, would be followed by the Council if its unanimous report should be flouted either by one or more parties to a dispute, an uncertainty which continues in the negative wording of Article 15(6) of the final Covenant. The deficiency of Article 15(6) in turn contributed to the tacit agreement, in Article 15(7), that in cases where the Council’s report is not unanimous war between members of the League may be entirely legal under the Covenant.

In due course this “gap” in the Covenant contributed appreciably to the movement for definitive outlawry of war as an instrument of national policy, which culminated in the Pact of Paris. So that, in the circle of history, the rigorous criticism of the draft covenant in the Senate of 1919 led step by step to the Senate of 1928 approving, through the Pact of Paris, the construction of a bridge for more active American co-operation with the League. At the time under consideration, however, the weakening of Article 15 was thought of only as a step towards meeting criticisms from the supporters of Mr. Lodge in the United States Senate.

The fourth and fifth points raised in Senator Hitchcock’s letter of March 4 had now been met. His sixth point was readily adjusted at the meeting of March 18 by inserting at the close of the article on mandates the sentence: “Nothing in this article shall be interpreted as compelling any State to be a mandatory.” This assurance was preserved in Article 22(2) of the final

<sup>7</sup> Compare Henry Cabot Lodge, *The Senate and the League of Nations*, p. 248.

<sup>8</sup> The change suggested by Cecil, but not adopted, is quoted in Miller, Vol. I, p. 291.

Covenant, where the option is expressed in the phrase: "and who are willing to accept it." Thus the last three of the Hitchcock resolutions were accepted in detail at the first informal Anglo-American conference on the Covenant held after President Wilson's return to Paris, while agreement in principle was reached on meeting the first three resolutions.

Of these, number one—reserving to each member State exclusive control over domestic issues—was implied in the unanimity rule amendment agreed to on March 18 and is safeguarded in numerous sections of the final Covenant.<sup>9</sup> The reason why it was not written into the League's Constitution in unequivocal language deserves mention. The campaign against Article 10 in the United States had already been started by Irish Republican elements on the thesis that this article was directed against Irish independence. In consequence, as President Wilson argued, another article inserted at this stage specifically emphasizing the inability of the League to interfere in domestic issues would have been regarded by the Irish extremists "as a shot at them," based on the assumption that the Irish question was entirely a domestic problem for Great Britain.<sup>10</sup> What is now the eighth paragraph of Article 15 of the Covenant was, however, added later to meet the substance of the first reservation advised by Senator Hitchcock.

The possibility of including a specific reservation protecting the Monroe Doctrine, and thereby meeting the second Hitchcock reservation, was also discussed at the meeting of March 18, with such effect that on the following day Lord Robert Cecil presented to the American delegation a draft article on the subject emphasizing the negative aspects of the Monroe Doctrine, but none the less showing his personal willingness to accede to

<sup>9</sup> Compare Articles 1(3), 5(1), 8(2), 13(1), 15(8), 15(9), and 26(2).

<sup>10</sup> Compare Miller, Vol. I, p. 294.

the preferential American request. For purposes of comparison with the eventual Article 21 of the Covenant this draft by Cecil is given below.

Where any coercive action has to be taken in the Western Hemisphere under Articles 10, 13, 16 or 17 no Power outside that hemisphere shall take part in such action except at the request of the United States of America and the other States members of the Executive Council, if any, situated in that hemisphere.

The desirability of writing into the Covenant a specific provision permitting the withdrawal of dissatisfied League members, in order to meet the third reservation listed by Senator Hitchcock, was similarly considered at the March 18 meeting and decided upon in principle, though with doubts as to the attitude of the French government thereto. In the discussion Mr. Miller set forth that in his opinion no member State, except under the doctrine of *rebus sic stantibus*, would be entitled to withdraw from the League unless such provision were made, the compact between the members being in the form of a treaty without either time limit or specified right of denunciation. The position taken thus favored the arguments of Webster, as opposed to those of Calhoun, in the debates before the Civil War on the right of secession under the Constitution of the United States. The decision to stipulate the right of withdrawal, now found in the third paragraph of Article 1 of the Covenant, emphasized the confederate, as opposed to federal, character of the League of Nations.

Woodrow Wilson's willingness to put his influence behind the changes in the draft of February 14 demanded by Republican leadership in the Senate was thus amply demonstrated in the Anglo-American session of March 18, and was forcibly followed up by the President thereafter. While this study is not concerned with the propriety of the Republican attitude after these amendments

were made, it is to be remembered that Mr. Wilson had from most influential Republican sources assurances that with such amendments "treaty will be promptly ratified," to quote a cable sent him by former President Taft on April 13, 1919.<sup>11</sup> Before the meeting of March 18, Mr. Henry White, Republican member of the delegation to the Peace Conference, had fruitlessly endeavored to obtain "exact phraseology of amendments modifying League of Nations Covenant which Senate considers important"; in the words of the cable sent by him to Senator Lodge on March 9.<sup>12</sup> When Senator Lodge refused to co-operate in this matter, the delegation obtained full compliance with the reservations suggested by Senator Hitchcock as necessary to insure the support of the recalcitrant Republican senators. The textual changes initiated at the meeting on March 18 were therefore not merely of considerable intrinsic importance. They also illustrate the positive influence of American opinion, entirely aside from the attitude of the official delegation at Paris, in the final stages of the framing of the Covenant.

#### SUGGESTIONS OF THE NEUTRAL POWERS

Representatives of the thirteen neutral Powers later invited to "accede without reservation" to the Covenant, and thereby to become original members of the League, were called into conference with a sub-committee of the Peace Conference Commission on the League on March 20 and 21.<sup>13</sup> The sub-committee was composed

<sup>11</sup> Compare Ray Stannard Baker, *Woodrow Wilson and World Settlement*, Vol. I, pp. 320-25.

<sup>12</sup> Compare Allan Nevins, *Henry White: Thirty Years of American Diplomacy*, Chap. 21. See also Lodge, pp. 123-28.

<sup>13</sup> These thirteen States, each of which sent one or more representatives to the two meetings of the sub-committee were: Argentina, Chile, Colombia, Denmark, Holland, Norway, Paraguay, Persia, Salvador, Spain, Sweden, Switzerland, and Venezuela. Among these the Chilean spokesman, Señor Ibáñez, was the only non-European to play a role at all prominent in the discussions.

of Cecil, as chairman, House, Bourgeois, Hymans, Vesnitch, and Veniselos, while among the neutral representatives were several men who have since played important roles in helping to guide the League's destinies. Particularly was this true of the Dutch delegation, containing Messrs. Loudon, Loder, and van Eysinga, and the Swiss delegation, which included Messrs. Calonder, Huber, and Rappard.

At the outset of the discussions the chairman emphasized the "wholly unofficial" character of the meeting and, although he observed that the intention of the project was a league of nations and not a league of Allies, a broad hint was given that the basic decisions regarding the Covenant had already been taken. Any discussion of underlying principles was deprecated in favor of specific suggestions for amendment desired by the neutral States. The draft covenant of February 14 served as the basis of discussion and no mention was made of the changes agreed upon at the highly important conference held by Cecil and Wilson on March 18.

None the less, the contributions made by a number of the neutral spokesmen at these meetings were of by no means negligible significance. Though they resulted in little further amendment of the Covenant, in several respects they closely foreshadowed the actual development of the League in operation. They assisted in constitutional definition, as when the Dutch delegation observed that in spite of its name the "Executive Council" had been given much more than merely executive powers. And the outspoken way in which a number of the smaller European neutrals refused to accept meekly certain of the arrangements approved by the Great Powers gave the first indication of the important role these little States were to play later in determining the League's constitutional development.

Several of the amendments requested by the representatives of the European neutrals envisaged augmentation of the powers of the Assembly over those outlined in the draft covenant of February 14. Thus Norway asked that instead of having the Body of Delegates (Assembly) meet "at stated intervals" it should be stipulated that "meetings of the Body of Delegates shall be held each year at a time determined in advance." While this change was never written into the Covenant it was adopted by the Assembly itself as the first of the Rules of Procedure drawn up at the first session in November 1920.<sup>14</sup> Another Norwegian amendment asked for an increase in Council membership from nine to fifteen, meaning that ten instead of four of the nations on the Council should be selected by the Assembly, and demanded that: "The members appointed by the Body of Delegates shall serve for three years." In 1926 the Council membership was increased to fourteen, of which nine are elected by the Assembly, and with certain re-eligibility provisions the three-year term was made normal for holders of non-permanent seats.<sup>15</sup>

Similarly prophetic of actual development once the League was initiated was a Swedish suggestion that, after an increase in the elected membership of the Council, the "Secondary Powers" to sit thereon should be chosen according to groupings "based upon the geographical relations between States, their community of language, culture, etc." This doctrine of regional representation is now a well-established principle in elections to the Council, and, as will be shown later, there has come to be widespread support of the further Swedish thesis of 1919 "that election should be so arranged as to avoid any country being always left out."<sup>16</sup>

<sup>14</sup> Compare pp. 510-11 below.

<sup>15</sup> Compare p. 362 below.

<sup>16</sup> Compare pp. 349-50 below.

The basis of what is now Article 26(2) of the Covenant was laid by comments from the Chilean, Dutch, and Swiss representatives. In varying forms these pointed out that under the first part of this article, which was all of it in the draft of February 14, a minority of States could be bound by amendments to the Covenant in spite of their dissent therefrom. To safeguard national sovereignty in such cases the Swiss delegation proposed that under particular circumstances "the States which have voted against such amendments may withdraw from the League." This provision is the essence of the present Article 26(2).

Other amendments proposed by the European neutrals anticipated a constitutional development for the Assembly of a character more far reaching than has actually taken place. The following amendment from the Dutch delegation, for instance, envisaged the Assembly as a clear-cut legislative organ:

The Body of Delegates shall promulgate laws concerning the execution of the present Constitution in so far as these laws touch upon the reduction of armaments (Article 8); the organization and the procedure of the Permanent Court of International Justice, provided for by Article 13; the organization and procedure of the permanent court of conciliation outlined in Article 15; preparation for such economic and military action as is provided for in Article 16, as well as such other matters as may be of common interest to the contracting States.

A Danish amendment was directed against the complete control over the selection of the Secretary-General given to the Council by the draft covenant of February 14, substituting for that method the provision that this officer "shall be chosen by the Body of Delegates on the motion of the Executive Council." This alteration was in effect adopted in the wording of the second paragraph of Article 6 of the final Covenant, which stipulates that, after the first incumbent of that office, "the Secretary-

General shall be appointed by the Council with the approval of the majority of the Assembly." Another Danish amendment provided that after international armament limitation had been agreed upon in accordance with Article 8, "the plans of reduction shall be submitted for decision of the Body of Delegates."

A third Danish amendment would have redrafted Article 14 so that plans for the World Court, after formulation by the Council, "shall be submitted to the approval of the Body of Delegates" instead of to the members of the League. A Swiss amendment suggested that the Court panel be appointed by the Body of Delegates, for the same period of nine years which was eventually decided upon under simultaneous, though separate, election by Council and Assembly. On the same subject the Swedish delegation observed that, "in view of the great importance of this body [the World Court], it would seem that if the plan for its creation can not be outlined in the Covenant, the task of outlining it should be entrusted to the Body of Delegates and not to the Executive Council." In short, the tendency to circumscribe the Council, to emphasize the Assembly, and to delegate to the latter powers which the framers of the Covenant had never wished this representative chamber to have, was pronounced in a majority of the resolutions sponsored by the neutral Powers.

Four of the European neutrals—Holland, Norway, Sweden, and Switzerland—combined forces to urge the creation of permanent commissions of conciliation as a definite part of the organization of the League. The Swiss delegation in this connection expressed doubt as to the impartiality of the Council, which it defined as "really a political body," as an organ of conciliation. This *démarche* brought from Lord Robert Cecil an interesting summary of the design of the Covenant in establishing peace preservation machinery, thereby indicating



that specially defined permanent commissions of conciliation would be superfluous, which was the final decision on this point in drafting the Covenant. Another instance of Cecil's ability to analyze the purposes of the Covenant in short space was when he told the neutral delegates, with reference to the responsibilities now grouped under Article 23, that the Peace Conference Commission "had been anxious to give the League a sphere of continuous international activity in addition to its primary duty, which was that of keeping the world's peace." His outline of the Covenant's intention with regard to conciliatory and arbitral procedure follows:

1. Where arbitration was possible, this had been considered to be the best method.

2. In other cases, either party could take the question either to the Executive Council or to the Body of Delegates.

These bodies could then take one of three courses:

(a) send the case to arbitration or to a judicial court, for their advice.

(b) appoint a special commission to investigate and advise on the dispute.

(c) retain the matter entirely in their own hands and try to bring the parties together and arrange the affair by conciliation.

#### THE SWISS NEUTRALITY AMENDMENT

Perhaps the most interesting of the amendments urged at the meetings of the sub-committee with the representatives of the neutral Powers was one which failed to command any general support at the time, which was never adopted, but which has none the less been of considerable influence in establishing the thesis of flexibility in interpreting certain of the more rigidly phrased obligations of the Covenant. This was the Swiss amendment seeking to insert, in the third paragraph of Article 16 of the draft of February 14, the words italicized below:<sup>17</sup>

<sup>17</sup> The wording of the quoted part of Article 16 was slightly changed in its final form, as may be seen by comparison with the text in the Appendix. But these changes were made without reference to the Swiss amendment.

The States members of the League agree, further, that . . . *on the request of the Council* they will afford passage through their territory to the forces of any of the States members of the League who are co-operating to protect the covenants of the League.

In its presentation this amendment was supported by two formal memoranda from the Swiss government, the first of which was prepared early in February as a general statement, while the second was designed particularly for consideration of the sub-committee during its meeting with spokesmen of the neutral Powers.<sup>18</sup> The earlier memorandum in entirety and the latter *inter alia* emphasized the importance to Switzerland of her tradition of permanent neutrality, the safeguarding of which was, of course, the purpose of the amendment, though its general wording would have made it applicable to any and every League member. It is to be remembered that in the issue of the passage of an international military force across "X" territory a national of "X" would be on the Council for "consideration of matters specially affecting the interests of that member of the League."<sup>19</sup> In view of the necessity of unanimous Council action the Swiss amendment consequently would have afforded a complete veto power to any State unwilling to see its territory crossed by an international police force. An analogous Danish declaration favored League recognition of the "permanent neutrality" of certain qualified member States.

The British supported the Swiss amendment,<sup>20</sup> the French opposed it,<sup>21</sup> and the American delegation wavered in its attitude but finally indorsed the French

<sup>18</sup> The text of these memoranda is given in Miller, Vol. I, pp. 429-31 and 303-05 respectively.

<sup>19</sup> The Covenant, Article 4(5).

<sup>20</sup> See British proposals to drafting committee, April 1, 1919, Document 29 in Miller, Vol. II.

<sup>21</sup> See *Minutes* (English), Preliminary Peace Conference, Commission on the League of Nations, fifteenth meeting, p. 101.

stand to reject the amendment at the final session of the Commission.<sup>22</sup> The British position was based on the pragmatic viewpoint that since the Swiss Confederation is in a unique situation, both from its geographical location and its special constitutional character, the exception asked by the Swiss government should be regarded as reasonable. The French argument was based on the logical contention that the amendment would make the application of military sanctions against an aggressor State less certain, and thereby weaken the degree of security afforded its members by the League. The American contention in the issue was fundamentally legalistic, based on the thesis that under the Covenant members of the League resign their right of impartiality in disputes *inter se*, and that as between members of the same confederacy there is no such thing as neutrality.<sup>23</sup> So the issue sharply focused the varying viewpoints of what is opportune, what is theoretically desirable, and what is legally proper, which time after time, in one form or another, have confronted the League in decisive stages of its development.

With the rejection of the Swiss amendment it was decided as an arbitrary rule for League members that, in the present wording of the last part of Article 16(3), "they will take the necessary steps to afford passage through their territory to the forces of any of the members of the League which are co-operating to protect the covenants of the League." Moreover, when Germany later asked for an exception from this rigid obligation, prior to her accession to League membership, the request was rejected. Yet it none the less remains true that in practise the rigidity of the obligation would probably

<sup>22</sup> The same. Compare also Miller, Vol. I, pp. 432 ff.

<sup>23</sup> In this connection it is noteworthy that the Swiss government's memorandum of February 1919, "Concerning the Neutrality of Switzerland," refers to the League of Nations as "the Confederate League" and speaks of its members as the "Confederate States."

prove far less than the wording implies. And without formal amendment of the Covenant the League organs have on several occasions acted to moderate the implications of Article 16, and therefore also Article 17, in spite of the provision of Article 1(1) making League membership contingent upon "accession without reservation to this Covenant."

#### INTERPRETATIONS OF ARTICLE 16

On February 13, 1920, for instance, the Council during its second session formally "accepted" as compatible with League membership later declarations of the Swiss government confirming its decision not to allow the passage of an international force or the preparation of military operations within Swiss territory.<sup>24</sup> On February 2, 1921, as a direct result of this Council resolution of a year earlier, the Swiss government was able to refuse passage across Switzerland to the small international force dispatched by the League to Vilna to supervise a plebiscite in the Polish-Lithuanian controversy over that city.<sup>25</sup> And in its note of refusal the Swiss Federal Council, apparently forgetful of its earlier emphasis on the "confederate" character of the League, asserted that:

... the [Swiss] Confederation preserves its entire liberty of action. Moreover, the fact that Switzerland has become a member of the League of Nations has in no way affected the legal aspect of the question.

In September 1921, the Second Assembly adopted as a proposed amendment, to be paragraph 4 of Article 16,

<sup>24</sup> *Official Journal*, March 1920, pp. 56-58.

<sup>25</sup> *Official Journal*, March-April 1921, pp. 170 ff. While yielding in the particular instance the Council did not concur in the general Swiss contention. In the words of the *rapporteur* (M. Bourgeois) "Switzerland has further appealed to her right of independent judgment. If every State may oppose to the League of Nations its own individual and separate conviction, a continuous co-ordination of effort will be very difficult. Each State must give evidence of its confidence in the Council, which represents it."

the qualifications quoted below, which was buttressed by a resolution stating that it should be regarded by the Council as a "rule for guidance," . . . so long as the amendments have not been put in force in the form required by the Covenant." While the constitutional force of this Assembly resolution is debatable, it is certain that in an emergency the Council will act less in accord with the unequivocal wording of Article 16(3) than with some such moderate interpretation as the following:

Nevertheless, the Council may, in the case of particular members, postpone the coming into force of any of these measures for a specified period where it is satisfied that such a postponement will facilitate the attainment of the object of the measures referred to in the preceding paragraph, or that it is necessary in order to minimize the loss and inconvenience which will be caused to such members.<sup>26</sup>

Finally may be mentioned the exceedingly interesting memorandum on Articles 10, 11, and 16 of the Covenant, prepared for the League's Committee on Arbitration and Security by M. Rutgers (Netherlands) as its *rappporteur* on this subject, and on September 20, 1928 recommended to the Council by the Ninth Assembly as:

. . . a useful piece of work which, without proposing a hard-and-fast procedure in time of emergency, and without adding to or detracting from the rights and duties of the

<sup>26</sup> *Official Journal*, S. S. No. 6, October 1921, p. 15. See also *Official Journal*, March-April 1921, p. 24. In 1924 the Assembly adopted a resolution tabling this projected amendment as "no longer opportune." In its place was substituted another amendment which would take from the Council the above authorization to postpone the sanctions of Article 16, and in some cases let the League members individually decide to exercise the sanctions "if they deem it expedient." This amendment, however, has not yet been signed or ratified by any of the permanent Council members, and has received no ratifications since 1926. The explanation is that instead of tinkering with Article 16, the League as a whole has preferred to let the drastic original wording stand, leaving it to the future to determine what textual revision will best accord with the possibilities of international co-operation against a State the actions of which are legally definable as "resort to war," whether or not war has been formally declared.

members of the League, provides valuable indications as to the possibilities offered by the different articles of the Covenant, and as to the way in which they may be applied, without prejudice to the different modes of procedure which the infinite variety of possible eventualities may render necessary in practice. . . .

Although it failed to alter the text of the Covenant the Swiss amendment initiated a more lenient conception of the obligatory nature of sanctions than had been envisaged by the actual draftsmen of the League's Constitution. The necessity of an interpretation departing from the letter of Article 16 and 17 of the organic act became immediately apparent as soon as the United States rejected League membership. It was, indeed, foreseen at the time of the meeting of the sub-committee with the representatives of the neutral Powers, for with reference to Articles 16 and 17 both the Swedish and Chilean delegates questioned the legality of League action to deprive non-member States of their connections with a country declared an aggressor by the League. The Swiss amendment, therefore, inaugurated the now well-established League policy of not taking all the obligations of the Covenant *au pied de la lettre*.<sup>27</sup> And while this policy has undoubtedly weakened the theoretical, as opposed to actual, strength of the League as a confederate form of association, it has also greatly forwarded an approach by the United States to a conception of neutrality not necessarily at variance with the obligations of the Covenant for League members. In the words of Mr. Newton D. Baker:

I have for a long time believed that the United States ought to declare as a fundamental doctrine of its national policy that

<sup>27</sup> Its more limited importance with reference to the narrowly favorable Swiss referendum on the entrance of that country into the League is set forth by William E. Rappard in *Les Origines et l'Œuvre de la Société des Nations*.

it will not trade with any nation at war which has been declared, by a competent tribunal, to be the aggressor. . . .

No such formal declaration of our national policy has been made by the government, but I think it has been made by the people of the United States, and it is my belief that if a war were to break out anywhere in the world between nations which have agreed to submit their controversies to arbitration and have agreed upon an agency to ascertain the facts and declare, as between them, which is the aggressor, public opinion in the United States would force our government to acquiesce in such a decision and to withhold the support of our resources, public and private, from the aggressor.

In this instance I am confident that public opinion has anticipated and preceded governmental action and that whether any such policy is declared or not, no nation, which aggressively breaks the peace of the world, will find it possible to rely upon American industry or American finance for support, or upon the American government for any benevolence in its neutrality.<sup>28</sup>

#### THE ELEVENTH MEETING AND COVENANT FLEXIBILITY

Following the two sessions held by its sub-committee with representatives of the neutral Powers the full Commission on the League of Nations resumed its meetings, the eleventh of these taking place under President Wilson's chairmanship the afternoon of March 22, 1919. In addition to the text of February 14 the Commission had before it the revisions agreed upon by Wilson and Cecil on March 18, and the amendments proposed by the spokesmen of the thirteen neutral States. The secondary attention accorded these last, however, was indicated at the outset of the meeting by decision not to give them

<sup>28</sup> Address before the Institute of Politics at Williamstown, July 30, 1931. Within a few weeks after the delivery of this speech its thesis was tested by the sudden outbreak of the Manchurian crisis and its theme was confirmed by the communication of October 9 from Secretary of State Stimson to Secretary-General Drummond stating that: "The American government on its part, acting independently through its diplomatic channels, will try to reinforce League action. . . ."

consideration except as sponsored by members of the Commission.<sup>29</sup>

While the amendments proposed by the neutrals for the most part lay undisturbed on the table, those agreed upon as desirable by Wilson and Cecil were taken up seriatim and incorporated almost without change into the Covenant, subject only to later linguistic revision by a drafting committee under instructions to make no alterations affecting meaning. At the eleventh meeting of the Commission the first eight articles of the draft of February 14 were thus carefully reviewed, the remainder of the text receiving examination at the two subsequent meetings. Since the changes jointly approved by President Wilson and Lord Robert Cecil at their conference on March 18 have already been examined<sup>30</sup> their adoption at the eleventh, twelfth, and thirteenth meetings of the Commission involves no further detailed attention, except where alterations of the Wilson-Cecil agreement took place. There were, however, a few new amendments and some discussions of constitutional significance.

The eleventh meeting at the outset approved the change of wording in the preamble whereby, in the words of Lord Robert Cecil, "Germany might be made to agree to the Covenant without becoming a member of the League."<sup>31</sup> This, as already described,<sup>32</sup> also necessitated substitution of the phrase "States members of the League" for "High Contracting Parties" in Article 1 and elsewhere throughout the Covenant. On a motion by M. Larnaude, Article 1 of the February 14 draft (Article

<sup>29</sup> Compare *Minutes* (French), eleventh meeting. In the words of M. Bourgeois: *la Conférence étant réunie entre Alliés ne peut entrer en conversation directe avec les Puissances neutres*. According to Miller, the edict to this effect came direct from Clemenceau. Compare Vol. I, p. 311, footnote.

<sup>30</sup> See pp. 126-32 above.

<sup>31</sup> Compare *Minutes* (English), eleventh meeting, p. 71.

<sup>32</sup> See p. 127 above.



2 of the final Covenant) was further amended by omission of the words italicized in the text below:

The action of the League under the terms of this Covenant shall be effected through the instrumentality of *meetings* of a body of delegates representing the States members of the League, of *meetings at more frequent intervals* of an executive council, and of a permanent international secretariat to be established at the Seat of the League.

It is perhaps noteworthy that M. Larnaude, speaking from the French text, asked only for suppression of the phrase *sessions plus fréquentes d'un Conseil exécutif* on the thesis that the role of the Executive Council is quite different to that of the Assembly; and circumstances might be foreseen in which the former body would be called together "in an almost permanent manner."<sup>33</sup> The approved proposal of President Wilson, however, was to suppress the word "meetings" ("sessions" in French) where applicable to both Assembly and Council, which clarified the text but in no way forwarded the French endeavor to establish a differentiation between the functions of Council and Assembly by this article.

Another observation worthy of quotation was made by Orlando in connection with an ineffectual attempt by Cecil to amend Article 2 of the February 14 draft by providing specifically for public meetings on the part of the Assembly. The following prescient remarks of this Italian delegate have been translated from the French *Minutes*. The same general argument was used by Cecil and Wilson at this meeting to frustrate a Belgian effort to define in the Covenant the essential difference of function between Council and Assembly.

It has been said that many important issues are not defined in the Covenant. The answer has been that the League itself will have to make many regulations to fill up the gaps. This reply has seemed to me very justifiable and I would ask that

<sup>33</sup> *Minutes* (French), eleventh meeting.

it be applied in the present circumstance. The duty of the Commission is to act quickly, and the most practical course will be to leave it to the experience of the League to regulate the publicity of its meetings and decisions.

Under Article 3 (now 4), concerning constitution of the Council, two abortive amendments introduced at this meeting may be mentioned for the precedent which they gave to movements to amend this troublesome article long after the establishment of the League.<sup>34</sup> "In order to meet criticism that the League was dominated by the five Great Powers," to quote the wording of the English *Minutes*, Lord Robert Cecil suggested that the delegates of these five nations in the Assembly should not participate in the selection of the non-permanent Council members. The Belgian representative (M. Hymans) thereupon brought in a motion for a wholly elective Council, with the provision that the panel of nine elected by the Body of Delegates (Assembly) "shall always include a citizen of the United States, the British Empire, France, Italy and Japan." While both of these amendments were withdrawn, each in its different way foreshadowed the trend towards Assembly control over Council composition which has been so marked a characteristic of the League's constitutional evolution.

As a new amendment to the same article the Commission adopted Cecil's provision permitting the Council to enlarge its membership without formal amendment to the Covenant, one of the important changes which had received President Wilson's approval at the Anglo-American conference on March 18.<sup>35</sup> This amendment was the basis of Article 4(2) of the final Covenant, under which Germany in 1926 became a permanent Council member and by virtue of which the non-permanent elective members have been increased successively, first

<sup>34</sup> Compare pp. 367-68 below.

<sup>35</sup> See pp. 127-28 above.

from four to six and then from six to nine. Commission approval was also extended to Cecil's amendment, now Article 5(1), specifying the unanimity rule "except where otherwise expressly provided." The English *Minutes* reveal that Cecil characterized this amendment as "merely a specific statement of a fundamental principle of the League." Its adoption on that definition is evidence that in the final stages of the drafting of the Covenant both Council and Assembly were regarded as developed forms of the pre-war international conference rather than as organs of a super-national government.<sup>36</sup>

In Article 5 of the February 14 draft, dealing with the organization of the Secretariat, Cecil proposed the insertion of a sentence reading: "The first Secretary-General shall be the person named in the protocol hereto and his successors shall be chosen by the Body of Delegates on the nomination of the Executive Council." The first part of this amendment, in Cecil's words, was suggested "in order that the work of the League might begin at the earliest possible moment." The provision for election of successors to the first Secretary-General was that requested by the Danish delegation at the meeting with representatives of the neutral Powers and the whole amendment became Article 6(2) of the final Covenant.<sup>37</sup>

The Cecil-Wilson agreement for a revision of Article 7 of the draft of February 14, now Article 1 of the Covenant, brought forth in the eleventh meeting of the Commission a clash of opinion again illustrating the cleavage between Gallic and Anglo-American opinion on certain basic aspects of the League of Nations. The issue of whether or not neutral Powers should be able to qualify as "original members of the League" had been settled affirmatively at the ninth meeting of the Commission.<sup>38</sup>

<sup>36</sup> Compare Miller, Vol. I, p. 316.

<sup>37</sup> Compare p. 140 above.

<sup>38</sup> See p. 118 above.

and Cecil's amendment as indorsed by Wilson was merely to replace a negative by an affirmative wording for the terms of membership applicable to those States not named in the proposed protocol as original members.<sup>39</sup> This change, however, served to revive the differences between those who wished to see the League formed as an alliance of war victors, and those, fortunately predominant, who desired that even its foundations should be built on a broader basis. The point is illustrated by the following extract from the English *Minutes* of the eleventh meeting:

Mr. Hymans thought that the honour of having been the founders of the League of Nations should be reserved for those States which had participated in the war.

President Wilson believed that it was best to avoid giving to the League the appearance of an alliance between victorious belligerents, in the first place because it was a world league; in the second place, because such a policy would lead to a too exclusive spirit in considering the claims to admission of new members.

Lord Robert Cecil agreed with President Wilson.

Mr. Hymans agreed that it would be right to admit certain neutral States into the League at the earliest possible moment, but they could not be admitted at the time when the Treaty of Peace was signed. The protocol to be drawn up could not take effect until after the signature of peace.

It was the possible difficulties inherent in the suggestion of a protocol of League membership to be acted upon separately from the Treaty of Peace which caused David Hunter Miller to suggest substitution of the term

<sup>39</sup> Article 7 of the draft of February 14 stated that "Admission . . . requires the assent of not less than two-thirds of the States represented in the Body of Delegates. . . ." The amendment backed by Cecil and Wilson altered this to: "Any fully self-governing State . . . may become a member of the League if its admission is agreed to by a two-thirds majority of the Body of Delegates. . . ." As Cecil is quoted in the English *Minutes* of the eleventh meeting (p. 74): "The purpose of this amendment was to give a more ready welcome to newcomers by substituting a positive for a negative form of wording."

"annex" for protocol, as was eventually agreed upon and is now found in Article 1 of the Covenant.<sup>40</sup>

Article 8 of the draft of February 14 (and of the final Covenant) was the last to be reviewed during the eleventh meeting of the Commission. The amendment agreed upon by Wilson and Cecil to meet the fifth of the revisions suggested by Senator Hitchcock was promptly adopted,<sup>41</sup> the salient phrase "*adopted by the several governments*" now finding place in Article 8 (4) of the Covenant. On Japanese motion a new amendment, now Article 8 (3), was here inserted, providing that disarmament plans, when formulated by the Council for national action, "shall be subject to reconsideration and revision at least every ten years."

The close of the meeting saw another vain effort by the French delegates to have the Covenant establish a permanent League commission charged with oversight of military preparations in the different member States. The response of President Wilson, pointing out that such a commission would give the League definite and unwelcome super-State characteristics, is unfortunately available only in baldest summary in the English *Minutes*. The French *Minutes* give his position in more detail, and as retranslated read:

The President fears that the investigations of a commission analogous to that envisaged by the French amendment, to examine whether or not the nations are observing their engagements, would be ill received in many countries. Such procedure cannot be compared to that which might be carried out on domestic territory. If we were considering a union of States with a common legislature, we might envisage such a mechanism. But our steadfast idea has been to set aside the conception of a super-State and, under these conditions, it would seem difficult to operate a machinery of authentication within the different associated nations.

<sup>40</sup> Miller, Vol. I, pp. 281 and 319.

<sup>41</sup> See p. 128 above.

It has been observed that the French during the drafting of the Covenant never abandoned their thesis that the League should have an international military control commission as a permanent organ. When the amendment to this effect failed of adoption at the eleventh meeting of the Peace Conference Commission, M. Bourgeois stated that he still advocated the measure, and reserved the right to introduce it in plenary session of the Conference.

#### PERSISTENCE OF "GENERAL STAFF" IDEA

French insistence on giving the League tangible military powers was reiterated at the opening of the Commission's twelfth meeting, held the night of March 24, 1919. The amendment for an international military control commission having been tabled again, as noted directly above, M. Bourgeois drew the second string to his bow by reintroducing the modified amendment for an international general staff, although this had already been rejected by the Commission at its tenth meeting.<sup>42</sup>

M. Bourgeois argued at length that the permanent international military organism which his government wished to see established by the Covenant had been much misinterpreted, and would threaten neither the freedom of action nor the independent sovereignty of the various member States. It was not the establishment of a truly international army which he urged, but machinery to set up an international control over existing military establishments, to be exercised in the event of a violation of the Covenant. His remarks showed clearly that what the French government desired to see created was something closely resembling an international

<sup>42</sup> See p. 109 above, where the text of this amendment is given. The English *Minutes* of the twelfth meeting refer to it incorrectly as "a new amendment." In fact, it was placed before the twelfth meeting of the Commission on March 24 in exactly the same wording as when rejected by the tenth meeting on February 13.

general staff, even though that designation of the proposed organization was carefully sidestepped by its advocates. In view of the steadfast consistency of the French position on this issue the central portion of M. Bourgeois' argument before the twelfth meeting of the Commission may be quoted:

The essential idea of the French amendments was to give to the Executive Council adequate information as well as a methodical and considered plan of action from the military and naval point of view, so that, if a danger should arise, if a sudden attack should be launched, the Executive Council would be ready to take immediate decision relying upon the programme of the permanent organ. It was not only a matter of protecting the French frontier, but of protecting every frontier which might be in a dangerous geographical position; and this fact was true of a great number of frontiers in the world. The precautions to be taken, therefore, were of great importance to all peaceful nations.

The machinery contemplated by the French amendments would be the following: the permanent organ would concern itself with preparing the plan of military and naval action in such a way that, in case of necessity, each one of the governments retaining its sovereignty, might immediately advise its constitutional authority and submit to it a definite plan for meeting a threatened attack or any danger of a war-like character. The parliaments of the respective governments could only decide upon the amount of credits to be established and upon the order for mobilization if their responsible governments were ready to furnish them with exact information as to the extent of the military action required by the League of Nations. The French proposal, instead of causing any anxiety to constitutional authorities, was on the contrary calculated to give them all necessary guarantees concerning the extent of the effort which each country might be called upon to make. Such explanations as these would make clear the meaning of the French amendments and defeat such objections as an incorrect interpretation had provoked. . . .<sup>48</sup>

The renewal of the discussion led to a minor revision of Article 9, which as Cecil pointed out was itself a

<sup>48</sup> *Minutes* (English), twelfth meeting, p. 77.

compromise designed to meet the French position half-way.<sup>44</sup> Except for that, no concessions to the French demand were made though President Wilson, evidently seeking to play the role of conciliator, argued:

... The amendment of the French delegation did not appear to add anything important to the present text, since the latter placed no restriction upon the scope and the kind of advice which the Executive Council might ask of the Permanent Commission. Its competence was not limited and was quite broad enough to relieve all the anxieties which had been so clearly set forth by Mr. Bourgeois.

It should here be emphasized that the defeat of this French amendment in the Commission by no means ended the effort of that government to establish the nucleus of an international general staff within the organization of the League. Indeed, as Señor de Madariaga points out in his study on *Disarmament*, there were for a time "two independent units" within the so-called disarmament section of the Secretariat, one of which, the fruit of the French effort to establish an international police authority, was at one period actually known as the "armaments section."<sup>45</sup>

While the disarmament section of the Secretariat has now for years been unified under civilian control, more than a trace of the "general staff" idea still lingers in the presence therein of three professional officers who serve as secretaries for the military, naval, and air sub-commissions of the Permanent Advisory Commission, established under Article 9 of the Covenant. The tradition is well established that of this trio the army officer should be a

<sup>44</sup> Minutes (English), twelfth meeting, p. 78. See also p. 119 above, where the development of the text of Article 9 is given in tabular form. The changes at the twelfth meeting, suggested by M. Kramar of Czechoslovakia, made the Permanent Disarmament Commission advisory to the Council, instead of to the League as a whole, and extended its scope so as to advise not merely on the execution of Article 8, but also on what is now Article 1 of the Covenant.

<sup>45</sup> Salvador de Madariaga, *Disarmament*, p. 81.



Frenchman, the naval officer an Englishman, and the aviation officer an Italian. Moreover, while these three men are members of the League Secretariat, paid out of the League budget, their respective governments have been inclined to consider them as being only temporarily detached from active service under their national flags. The practise of the three governments is to change the personnel of these outposts in the League Secretariat every three years. Discussing this peculiar situation a former director of the League's disarmament section speaks of "the utter incompatibility between the spirit of the Covenant and the exceptional privilege granted not so much to the three Great Powers as to their three fighting departments."<sup>46</sup>

The Permanent Advisory Commission itself, known at Geneva as the P. A. C., was constituted by a resolution of the League Council adopted on May 9, 1920, in fulfillment of the definitive instructions contained in Article 9 of the Covenant. It is noteworthy that M. Bourgeois, who throughout led the fight for the French position during the meetings of the Peace Conference Commission, was also the *rapporteur* who presented to this meeting of the Council the plan of the P. A. C. as finally organized. To quote Señor de Madariaga again:

The choice of *rapporteur* was in itself significant. Disarmament questions were to pass through the mill of French ideas and tendencies before they were discussed by the Council. Everyone conversant with the methods of work adopted by the League particularly in these early days, will realize the importance of a step which gave the French War Office such an advantage over the other nations represented in the Council.<sup>47</sup>

As the nucleus of an international general staff which would fill a most responsible function in the League if the sanctions envisaged by Articles 16 and 17 of the Covenant were called into force, the Permanent Advisory

<sup>46</sup> The same, p. 83.

<sup>47</sup> The same, p. 78.

Commission is an efficiently designed body. On it are represented all countries which are members of the Council. Each of these fourteen nations has the right to appoint three representatives on the P. A. C.—a military, naval, and air officer—in addition to which a varying number of assistants are allowed. All the members of the P. A. C. are professional military men, appointed by and representative of their governments. Furthermore, its military, naval, and air sub-commissions are definitely co-ordinated by the professional officers placed inside the League Secretariat by the fighting services of France, Great Britain, and Italy.

Many of the generals, admirals, colonels, and commanders on this Permanent Advisory Commission are most charming and capable individuals. They are men competent to work out any problem in military strategy and tactics. They could agree on the raising, direction, and control of an international army, navy, or air force. But one problem that, as a body, the P. A. C. need never be expected to solve by itself is the reduction of national armaments. It would be as logical to expect a commission of undertakers to achieve a lowering of the mortality rate. It can be said that the P. A. C. has been of indirect value to the cause of disarmament by reason of its technical investigations and comparisons. But to prove that the Commission in its first decade of operation did anything tangible for the direct achievement of disarmament would be exceedingly difficult. As the record shows, the P. A. C. had to be supplemented, and to some extent displaced, by an entirely different type of civilian and diplomatic committee organization before the League's work for disarmament could even begin to show progress.

This confusion of effort in the disarmament work of the League during its first decade is largely traceable to the clash between French and Anglo-Saxon theory on the best way to obtain national security. The antithesis

in theory was by no means harmonized during the drafting of the Covenant and has materially affected, and hampered, the development of the League since its organization. Nor, regardless of the World Disarmament Conference of 1932, is it as yet certain whether the armaments problem is ultimately to be solved by achieving security through the establishment of an international *gendarmerie*, or by multilateral reduction without reliable pledges of effective assistance to victims of possible aggression. The flexibility of the League is such that either method could readily be followed through its agency. But if security can only be obtained by giving the League real police power, the armaments to be placed under its control must be made truly international in a way which Paris has not yet favored. When the Quai d'Orsay suggests that a German colonel should replace the French military officer in the League Secretariat, the official French thesis on international military control will be much more international, and much more convincing.

#### THE TWELFTH MEETING AND THE WORLD COURT

Reverting to chronological consideration of the development of the Covenant, it may be noted that the twelfth meeting of the Commission approved Article 10 as formulated by the draft of February 14, which was almost identical with its text in the final Covenant. President Wilson served notice of intention to propose an amendment to this article later, having in mind the Monroe Doctrine reservation. When this amendment was introduced at the fourteenth meeting, however, it was eventually decided to incorporate it in the Covenant as a separate article.<sup>48</sup>

The important revision in the first paragraph of Article 11, making action to safeguard peace obligatory for the League as a whole instead of optional for its sev-

<sup>48</sup> See p. 194 below.

eral members, was adopted in the form agreed to by Cecil and Wilson.<sup>49</sup> On proposal of the French delegation another important amendment, providing for the convocation of the Council in the event of any international incident likely to imperil peace, was adopted and as recast by the drafting committee is now the last sentence of Article 11 (1).<sup>50</sup>

Article 12, as drawn up in the draft of February 14, was by general admission unsatisfactory in phraseology. Its language, which had not been revised at the Anglo-American conference of March 18, verged upon inconsistency. On the one hand, it was an agreement not to resort to war without prior arbitration or inquiry, nor even then until three months after the arbitral reward or Council recommendation has been handed down. On the other hand, it was an agreement not to resort to war in any case against a League member complying with the arbitral reward or Council recommendation. In consequence, the article in its early form appeared to emphasize both the legality of war after a compulsory cooling-off period and the illegality of war against a Power which had accepted impartial judgment after complying with the statutory provisions of the article. The difficulty was referred to the drafting committee for solution, and the eventual formulation, in the words of David Hunter Miller,

... leaves the moratorium covenant in Article 12, puts the covenant against war in the case of arbitration in Article 13, which refers to that subject, and puts the covenant against war in the event of a unanimous recommendation by the Council in Article 15, which deals with such recommendations. . . .<sup>51</sup>

An interesting Japanese proposal made at this time would have added to Article 12 a paragraph providing for suspension of military preparations by the parties

<sup>49</sup> See pp. 131-32 above.

<sup>50</sup> The essence of this provision was contained in the House draft. Compare p. 17 above.

<sup>51</sup> See Miller, Vol. I, p. 326.

to a dispute during the period of its formal consideration by external authority, and for the three months thereafter. This proposal, while sent to the drafting committee for further consideration, failed to achieve incorporation in the Covenant. Had this amendment been adopted it might well have been invoked as of direct applicability to the Manchurian dispute of 1931, the more so because originally sponsored by the Japanese government.

A damaging criticism of the Japanese proposal as framed was that it would automatically favor the position of a party to a dispute which had made belligerent preparations prior to the submission of the dispute to arbitration or examination by the Council. This criticism was guarded against in a suggestion for a "Model Treaty to Strengthen the Means of Preventing War" presented by Germany to the League's Committee on Arbitration and Security in 1927. As later developed by this Committee the first article of the "Model Treaty" may profitably be compared with the text of the abortive Japanese amendment.

PROPOSED AMENDMENT TO  
ARTICLE 12 (1919)

From the time a dispute is submitted to arbitration or to inquiry by the Executive Council, and until the lapse of the aforesaid term of three months, the parties to the dispute shall refrain from making any military preparations.

ARTICLE 1 OF PROPOSED  
MODEL TREATY (1928)

The High Contracting Powers undertake, in the event of a dispute arising between them and being brought before the Council of the League of Nations, to accept and apply provisional recommendations by the Council relating to the substance of the dispute and designed to prevent any measures being taken by the parties which might have a prejudicial effect on the execution of an arrangement to be proposed by the Council.

The "Model Treaty," of which the opening article is quoted above, was "recommended for consideration by States members or non-members" by the Ninth Assembly, in 1928. On the initiative of the British delegation the Tenth Assembly, in 1929, asked the Committee on Arbitration and Security to frame a draft general convention on the lines of the model treaty. This was duly accomplished, the draft being submitted to the Eleventh Assembly in September 1930 and by it referred for further study to a special committee which the Council was requested to appoint. A revised text was approved by the Twelfth Assembly in September 1931 and immediately opened for signatures and subsequent ratifications. While definite progress on the issue has been very slow it provides an interesting theoretical illustration of the way in which a proposal excluded from the Covenant may in time find its way back in the form of a general convention, sponsored by the League, which if ratified by all League members would have as much legal force as an article in the Covenant itself.<sup>52</sup>

Of more direct influence in League development was an amendment to Article 13 of the Covenant introduced for the first time by Lord Robert Cecil at the twelfth meeting of the Commission. This provided a classification of justiciable disputes to be deemed *among those*<sup>53</sup> suitable for arbitral treatment. In substantially the form sponsored by Cecil this amendment became Article 13 (2) of the final Covenant. The same classification of legal disputes, concerning—

- (a) The interpretation of a treaty
- (b) Any question of international law

<sup>52</sup> The full text of the "General Convention to Improve the Means of Preventing War" is given in the *Official Journal*, S. S. No. 92, October 1931, pp. 24-27.

<sup>53</sup> The inclusion of these two words was suggested by President Wilson. Compare *Minutes* (English), twelfth meeting, p. 79.

(c) The existence of any fact which, if established, would constitute a breach of an international obligation

(d) The nature or extent of the reparation to be made for the breach of an international obligation—

is found in the famous "Optional Clause" of the World Court Statute.<sup>54</sup> States adhering to this, as do now the great majority of League members, accept the jurisdiction of the Court as compulsory in the categories given above.

In Article 14, providing for the establishment of the World Court, the Cecil-Wilson conference of March 18 had suggested significant revisions.<sup>55</sup> At the twelfth meeting of the Commission Cecil introduced as a further amendment the provision that the Court should be competent to hear and determine *any dispute or difference of an international character including* "any matter which the parties recognize as suitable for submission to it for arbitration," as the article had previously specified. The upshot of this was that the Cecil amendment, omitting the word "difference," came into the final Covenant and by its more sweeping language resulted in elimination of the lesser phrase referring to arbitration as a Court function. The effect of this was not merely, as Miller noted, "an enormous addition to the jurisdiction" of the Court<sup>56</sup> but was even more a definite alteration in the nature of the eventual Court, which by the change ceased to be visualized as an important element in a system of arbitration and in place of that assumed clear aspects of a world-wide judiciary power.<sup>57</sup>

Following the adoption of Cecil's amendment the Commission gave consideration to a far-reaching proposal presented by M. Larnaude in behalf of the French gov-

<sup>54</sup> Article 36.

<sup>55</sup> See p. 132 above, with its textual comparison of the forms of this article as it was developed.

<sup>56</sup> Vol. I, p. 329.

<sup>57</sup> Compare Antonio Sánchez de Bustamante: *The World Court* (translated by Elizabeth F. Read), pp. 91 ff.

ernment. In part this was covered by the development just approved, but the Larnaude amendment also stipulated that the Court should have jurisdiction in "any matter arising out of the interpretation of the Covenant establishing the League." As its proponent is quoted in the English *Minutes* of the twelfth meeting: "his proposal was based upon the American Constitution, according to which the Supreme Court has jurisdiction over questions of a constitutional nature."

Both Cecil and Orlando spoke against this plan to make the World Court a supreme court for the League, stating that questions of interpretation of the Covenant had better be left to the Council. M. Larnaude's proposal was therefore rejected. This has not meant that questions of construction regarding the Covenant cannot be submitted to the Court for an opinion, or as matters of litigation, as happened in the Mosul case, for instance. The decision, in the words of Judge de Bustamante:

. . . was simply a matter of preventing the Court from being turned into an auxiliary of the League, which would have been obliged to wait constantly for the Court's opinion before carrying out its work. Both needed to be, and became, separate organisms; they do not respond to the same impulse or to the same necessity; they can, and should, complete each other, without blending into each other.<sup>58</sup>

The twelfth meeting of the Commission made several further alterations in Article 15, perhaps the most tangled in its evolution of all the more important articles of the Covenant. The deletion agreed upon by Wilson and Cecil on March 18, in order to meet what Senator Hitchcock had termed the "ambiguity" in the article, was approved. In behalf of M. Veniselos (Greece) who was absent from this meeting, Lord Robert Cecil then introduced an amendment providing that in the case of disputes referred from the Council to the Assembly

<sup>58</sup> The same.



the report of the latter should, if concurred in by all the States represented on the Council and by a majority of the other League members, have the same force as a unanimous Council report. This amendment, which merely guarded against what would otherwise have been a discrepancy between the powers of the two organs, was adopted in principle and now forms the latter part of Article 15(10). It is particularly interesting that Cecil, throughout the champion of Council domination, should have sponsored this step to secure for the Assembly an equal constitutional prerogative. The importance of his move was demonstrated when, just thirteen years later, China referred its dispute with Japan to Assembly control.

Also of significance was the amendment introduced by President Wilson to cover the first of the Hitchcock reservations—"a reservation to each High Contracting Party of its exclusive control over domestic subjects." With an alteration suggested by Mr. Koo this amendment was approved and now forms Article 15(8) of the Covenant.<sup>59</sup> Its adoption served to render superfluous a British amendment of the same intent, which read:

Nothing in this Covenant shall be deemed to limit the sovereignty of the States members of the League or their right to decide their own domestic policy, except as herein expressly stated.

Paragraph 8 of Article 15 was placed in the Covenant to meet the British and American objections, particularly those of leading Republican senators, to the overriding of "domestic jurisdiction" implicit in the draft of

<sup>59</sup> The point of Koo's clever suggestion was to permit a nation to claim that its domestic jurisdiction is interfered with by another Power, and on that ground to bring the issue before the League, instead of placing the emphasis on the prevention of League interference in a domestic issue, as was the case with Wilson's amendment as introduced. Compare Miller, Vol. I, pp. 331-32. The special applicability of the revision to the case of China is evident.

February 14. Like paragraph 7, which legalizes war between League members under certain circumstances, this amendment is a further weakening of the original intention that Article 15 should create the authority of an international jurisdiction for disputes between nations. In the words of Professor Brierly: "The great majority of really dangerous international disputes arise out of matters which indisputably fall within the category of domestic jurisdiction, and the problem of how to deal with them is the most crucial, and unfortunately also the most intractable, of all international problems."<sup>60</sup>

The eventual wording of Article 15(8), however, leaves final judgment on the definition of domestic jurisdiction to the League Council's interpretation of international law, and to that extent tends to eliminate the anarchic condition certain to result if each nation may decide on this matter according to its own unhampered will. From the viewpoint of ordered international relations the abortive British amendment, quoted above, was far inferior to that finally adopted:

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

Two other points of interest with regard to Article 15 were raised at this twelfth meeting. The Belgian delegation proposed an amendment which would have sanctioned "special conventions intended to eliminate any possibility of war" between particular States. This amendment envisaged regional agreements such as are now fully sanctioned by the League, the outstanding example being the Locarno Treaties. It was not pressed when President Wilson recalled the understanding that

<sup>60</sup> "Matters of Domestic Jurisdiction," *British Year Book of International Law*, 1925, p. 13.

the terms of the Covenant allowed the conclusion of special conventions intended to diminish the risk of war.<sup>61</sup> The other suggested amendment was introduced by Lord Robert Cecil, providing for "the establishment of a system of commissions of conciliation" by the Council, as had been urged by certain of the neutral Powers.<sup>62</sup> This amendment also was withdrawn after President Wilson had pointed out that the Council's right to suggest methods of conciliation made the appointment of such commissions an implicit power of this organ.

The last article considered at the twelfth meeting of the Commission was number 16, prescribing sanctions. The absence of any substantial change in the text of this article from the time of the Hurst-Miller draft had been notable, and with the exception of the alterations cited below its text in the draft of February 14 was virtually identical with the text of its first three paragraphs in the Covenant today.<sup>63</sup> At the twelfth meeting, however, two minor insertions were made to emphasize the fact that in the application of sanctions the League proposes while the member States dispose. The insertions are here italicized.

It shall be the duty of the Executive Council in such case to recommend *to the several governments concerned* what effective military, naval or air force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The members of the League agree . . . that they will *take the necessary steps* to afford passage through their territory to the forces of any of the members of the League which are co-operating to protect the covenants of the League.

Of very real importance, however, was the French move, at this meeting, to extend the applicability of

<sup>61</sup> *Minutes* (English), twelfth meeting, p. 80.

<sup>62</sup> See p. 141 above.

<sup>63</sup> Paragraph 4 of Article 16 was added by the committee on revision. See p. 186 below.

sanctions beyond a breach of Article 12, as at first established, so as to make them effective also for a "break or disregard" of obligation assumed under Articles 8, 13, and 15. While the French yielded on the issue of Article 8, applicability of the sanctions article to Article 15, which had British support, was approved at this meeting, and applicability to Article 13 was added later. In theory, this would seem to make sanctions available to enforce an arbitral award or a judgment of the World Court.<sup>64</sup>

#### THE THIRTEENTH MEETING AND NEW ACTIVITIES

The night of March 26 the Commission completed its re-examination of the February 14 draft and left it in the hands of a revising committee to formulate a text for final approval by the Commission before submission to a plenary session of the Peace Conference. Several further additions of consequence were made to the Covenant as a result of this thirteenth meeting.

At the Cecil-Wilson conference of March 18, two small textual alterations in Article 17 had been agreed upon, which were adopted at the opening of the thirteenth meeting. Both of these were in the last sentence of the first paragraph.<sup>65</sup> The first change stipulated that where non-member States are invited to accept the obligations of League membership in the event of an international dispute affecting them "the provisions of Articles 12 to 16 inclusive shall be applied," the text in the draft of February 14 having vaguely said that "the above provisions shall be applied with such modifications as may be deemed necessary by the League."

The second change followed at the end of this sentence, substituting therein the words "Executive Council" for the word "League." This alteration indi-

<sup>64</sup> Compare Miller, Vol. I, pp. 333-34.

<sup>65</sup> Compare present text in Appendix A.

cated the tendency to favor the Council rather than the Assembly in cases where the authoritative organ had at first been unspecified, a tendency forwarded by the British during the entire drafting period.<sup>66</sup> The amendment specifying Articles 12 to 16 inclusive as those applicable under the provisions of Article 17(1) was, of course, merely a measure of clarification. But it illustrates the untidy workmanship apparent here and there in the Covenant, since the inclusion of Article 14 in this amendment was superfluous, if not entirely out of keeping, as will be realized from a glance at its text.

The position given in the Covenant to the mandates article, which is a unit by itself, unconnected with any of the rest of the text, was not finally decided until the last meeting of the Commission. It had been Article 17 in the Hurst-Miller draft, Article 19 in the draft of February 14, was made Article 18 by the thirteenth meeting, was reported back from the drafting committee as Article 21, and was eventually settled as Article 22. These shifts are mentioned to illustrate the changes in order, as well as the alterations of text, which marked the evolution of the Covenant. The important action of the thirteenth meeting on the mandates article was its acceptance of the American demand that "nothing in this article shall be interpreted as compelling any State to be a mandatory."<sup>67</sup>

Another, and more substantial, shift in numeration agreed to at this time grouped into a single article the provisions for general international activities on the part of the League which were defined as Articles 18, 20, and 21 in the draft of February 14. For these three articles, concerning respectively supervision of the traffic in arms,

<sup>66</sup> This particular alteration had been advised by Sir Robert Borden, premier of Canada, in a thoughtful memorandum on the February 14 draft which was circulated at the thirteenth meeting of the Commission. For text of this memorandum see Miller, Vol. I, pp. 354-62.

<sup>67</sup> Compare p. 134 above.

organization of a "permanent bureau of labor," and forwarding of more free and equitable commercial intercourse, amalgamation had been agreed upon as desirable at the Wilson-Cecil conference of March 18. These originally distinct articles are now respectively paragraphs "d," "a," and "e" of Article 23. Lord Robert Cecil at the thirteenth meeting proposed two additional paragraphs, "b" and "c," for this unified article which, with the preamble common to all its sections, read:

In accordance with the provisions of conventions hereafter to be agreed upon for the purposes hereinafter stated, the States members of the League:

(b) Engage to secure just treatment of the native inhabitants of the territories under their control.

(c) Entrust the League with the general supervision over the execution of such agreements as shall have been jointly come to with regard to the traffic in opium and other dangerous drugs.

From these British amendments, agreed to at this meeting, has developed a large part of the world-wide social and humanitarian work of the League, its efforts to abolish human slavery in Abyssinia, Liberia, and elsewhere, and, perhaps most interesting from the constitutional viewpoint, the interlocking of the work of the International Labor Office and the League on the issue of conditions of native labor in mandated areas.<sup>68</sup> As may be seen by referring to the present wording of Article 23, the form agreed upon on March 26 was substantially final, except that paragraph "f," which sponsored the very important future work of the League's Health Organization, was added later.<sup>69</sup>

A British proposal formally brought forward for the first time at this meeting resulted in an important expansion of the article designed to place under the control of the League such existing international bureaus as

<sup>68</sup> Compare p. 623 below.

<sup>69</sup> See p. 189 below.

should desire that development. Cecil's amendments proposed: (1) the inclusion, in addition to international bureaus, of "all commissions for the regulation of matters of international interest" as organizations which in future "shall be placed under the control"<sup>70</sup> of the League"; (2) a new paragraph making the League Secretariat serve as "a central organization" for matters of international interest regulated by general conventions but not otherwise placed under the control of special bureaus or commissions; (3) a new paragraph providing that the expenses of bureaus or commissions placed under League control should, with Council consent, be treated as part of the expenses of the Secretariat.

With certain modifications, for the most part emphasizing the optional character of the proposed development, these British amendments were incorporated in what is now Article 24 of the Covenant, which may be consulted in the Appendix. The expansion of League activities under this article has not been as great as its text would seem to have anticipated,<sup>71</sup> partly because of American hostility in the early post-war years to direction by Geneva of any international enterprise with which the United States is associated. But the article has none the less proved significant because of its emphasis on the potential importance of the League Secretariat as a clearing house for international activities, a development which from the outset the British visualized more clearly than any other national delegation at the Peace Conference.

The three "Treaty Articles," now numbers 18, 19, and 20, providing that treaties shall be (1) public, (2) liable to reconsideration, (3) consonant with the Covenant, were accepted by the thirteenth meeting of the Commission in the form which they had assumed in the draft

<sup>70</sup> The committee on revision later substituted the word "direction" for "control."

<sup>71</sup> Compare pp. 263-64 below.

of February 14. With only minor verbal alterations these three articles retain this early form in the final Covenant, something which cannot be said of any other three consecutive articles therein.

In the draft covenant of February 14 the final article had been worded:

Amendments to this Covenant will take effect when ratified by the States whose representatives compose the Executive Council and by three-fourths of the States whose representatives compose the Body of Delegates.

An amendment to this article proposed by Lord Robert Cecil, and subsequently adopted, deleted "three-quarters" and substituted "a majority" in the above phraseology, its proponent arguing that this "would remove the impression which existed that the Covenant was to be unalterable."<sup>72</sup> During the discussion on this proposal President Wilson took the opportunity to introduce an amendment designed to meet one of the shortcomings of the February 14 draft most bitterly criticized in the United States, the rectification of which had been the third of Senator Hitchcock's suggested revisions, in his words: "some provision by which a member of the League can, on proper notice, withdraw from membership."<sup>73</sup>

Wilson's amendment on this point, prepared with hesitation from fear that the French would object strenuously to the implied weakening of the League, would have permitted withdrawal on one year's notice, "after the expiration of ten years from the ratification of the

<sup>72</sup> *Minutes* (English), thirteenth meeting, p. 85.

<sup>73</sup> In his speech of March 1, 1919, already referred to, Senator Knox had said: "The term league is a misnomer in another and really vital matter. For a league connotes a confederation, and a confederation implies a right in the several parties to withdraw at their will. But there is no right of secession within the four corners of this covenant. On the other hand, the association here provided for is a union in the full sense of that term as applied to our own political institutions. Once in this union and we remain there no matter how onerous its gigantic burdens may become. . . ."



Treaty of Peace of which this Covenant forms a part." To the surprise of the American delegation French criticism of the amendment was directed not at the request for stipulation of the right of withdrawal, thus establishing the confederate character of the League, but at the provision for a fixed period prior to the expiration of which this right would be denied. In the words of M. Larnaude:

To say in an act of the League that it will only endure for ten years . . . is to give the impression of great fragility for the work which we are undertaking.<sup>74</sup>

After lengthy discussion, during which President Wilson made the prediction that "the time would come when men would be just as eager partisans of the sovereignty of mankind as they were now of their own national sovereignty,"<sup>75</sup> an amendment based on the French formula was substituted for that providing a time limit before withdrawal from the League would become permissible. The drafting committee later placed this amendment, of which the text follows, in Article 1, where it is found today in somewhat more polished but otherwise unaltered phraseology. It will be noticed that the text does not specify the authority which is to judge

<sup>74</sup> *Minutes* (French), thirteenth meeting. On the discussion Miller makes the following interesting observation: "The difference in the point of view between the American legal mind here and the French legal mind is very striking. We would say that a clause binding the parties absolutely for ten years and then giving a right of withdrawal on notice was more stringent than a clause simply giving a right of withdrawal on notice. . . . The reasoning, however, is wrong, because it looks more at words than at the psychology of human beings. As the continental jurists pointed out, the fixing of a ten-year period would be regarded by the world as a trial term at the end of which the League would presumably break up, or at least might break up." (Vol. I, pp. 342-43.) There can be little doubt that the tenth anniversary of the entry into force of the Treaty of Versailles, in January 1930, would have been a crucial period for the League had this amendment by President Wilson been adopted.

<sup>75</sup> *Minutes* (English), thirteenth meeting, p. 86.

whether the obligations have been fulfilled, and experience to date indicates that the proviso is not likely to be invoked:

Any State a member of the League may, after giving two years' notice of its intention, withdraw from the League, provided all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.<sup>76</sup>

Only one entirely new article was proposed at the conclusion of the re-reading of the February 14 draft. This, as put forward by Lord Robert Cecil, provided that: "All bodies formed under or in connection with the League, including the Secretariat, may comprise women as well as men." This did not remain a separate article, but in strengthened language—"all positions . . . shall be open equally to men and women"—is now the third paragraph of Article 7.

Just before adjournment of the meeting, and reference of the revised text to a drafting committee, M. Bourgeois again raised the issue of the unadopted French amendments for a military control committee and an international general staff. He was, with difficulty, prevailed upon not to demand a final vote on this thorny issue, which was not finally excluded from the Covenant until the very end of the drafting period.<sup>77</sup>

<sup>76</sup> It has been argued that this proviso does not qualify the right of withdrawal, but merely introduces an obligation continuing during the two-year period. "Any allegation of breach of the proviso would have to admit the fact of withdrawal from the League." Compare David Hunter Miller, *My Diary at the Conference of Paris*, Vol. XX, pp. 480-83.

<sup>77</sup> Compare *Minutes* (French), thirteenth meeting.

## CHAPTER V

### THE ADOPTION OF THE COVENANT

It was no mere drafting committee which was appointed at the close of the thirteenth meeting of the Commission to redraft the Covenant in accord with the changes agreed upon at the sessions of March 22, 24, and 26. In several instances at these three meetings amendments had been adopted in principle, subject to consideration by the new sub-committee. In consequence the functions of this sub-committee were tacitly enlarged, as was recognized at the adjournment on March 26. President Wilson, as chairman, then announced that "the work of revision was now to be undertaken by a committee on revision," naming as its members Cecil, House, Larnaude, and Veniselos.<sup>1</sup>

This committee on revision, as it should properly be styled, held three meetings, two of them on April 1, 1919, and the last on the afternoon of the following day. Of some significance, as showing the growing importance which the Quai d'Orsay was beginning to attach to the League even before adoption of the Covenant, was the attendance of several French experts as advisers to M. Larnaude.<sup>2</sup> The procedure of the committee was to scrutinize word by word the English text as amended from the draft of February 14 by the eleventh, twelfth, and thirteenth meetings of the full Commission. For this purpose a tentative revision, incorporating these changes and agreed upon by Cecil Hurst and David Hunter Mil-

<sup>1</sup> *Minutes* (English), Preliminary Peace Conference, Commission on the League of Nations, thirteenth meeting, p. 87. Miller substituted for House at the meetings of the committee.

<sup>2</sup> Compare David Hunter Miller, *The Drafting of the Covenant*, Vol. I, p. 402.

ler, served as basis, this final exclusive collaboration between the legal advisers of the British and American delegations having followed logically on the policy of Anglo-American co-operation out of which the Covenant was built. The committee on revision also had before it a further paper of British proposals for amendments, most of them of quite secondary importance.<sup>3</sup> In addition there were under consideration a large number of solicited or unsolicited suggestions which had come in from prominent leaders in various countries, particularly the United States. These ideas were of course voiced indirectly, so far as they were taken up, by one or other of the delegates.

Some of the points made in certain of these external suggestions had been met before the committee on revision assembled, either by changes approved by the full Commission at its eleventh, twelfth, and thirteenth meetings, or by changes suggested at the Hurst-Miller conferences on March 29-30. Particularly was this the case with a lengthy and thoughtful memorandum prepared by Sir Robert Borden, under date of March 13.<sup>4</sup> In this paper, for instance, the Canadian Premier had advocated dropping the adjective "executive" as a qualification of the Council, since "the Council is not really an executive body." Mr. W. M. Hughes, the prime minister of Australia, later made the same criticism<sup>5</sup> with the result that this attempted definition of the Council was excised by Hurst and Miller, their action receiving the approbation of the committee on revision. The Borden memorandum also suggested a more precise definition of the

<sup>3</sup> These British proposals are printed as Document 29 in Miller, Vol. II.

<sup>4</sup> The full text of the Borden memorandum is quoted by Miller, Vol. I, pp. 354-62.

<sup>5</sup> In his "Notes on the Draft Covenant" dated Mar. 21, 1919, Mr. Hughes wisely noted that: "It cannot be too strongly emphasized that the large body is not a legislature, and the small body is not an executive, and a nomenclature which encourages that idea is dangerous. Both are organs of international consultations."

powers and duties of the Body of Delegates, which resulted in the insertion of the present Article 3(3), though this was made identical with the wording, now Article 4(4), defining the powers and duties of the Council. No attention was paid to Sir Robert Borden's suggestion that Article 10 "should be struck out or materially amended."

#### SUGGESTIONS OF REPUBLICAN LEADERS

From the viewpoint of the American delegation the most important of the eleventh-hour suggestions for Covenant revision were those sent in by former President Taft, Charles Evans Hughes, and Elihu Root, three outstanding Republican leaders whose support was expected to insure ratification by the United States Senate.

Of these Mr. Taft's memorandum was the earliest. Dated at Washington on March 18, 1919, it was addressed to President Wilson in Paris under covering letter to his secretary at the White House, Mr. Joseph P. Tumulty. The latter cabled it to Paris the same day, an expansion of Mr. Taft's original memorandum prepared by him on the day following being similarly forwarded.<sup>6</sup> The two communications called for specific reservation of the Monroe Doctrine; arrangements to legalize withdrawal from the League; provision for periodic re-examination by the Council of the armament limitations adopted by the several governments; specification of the unanimity rule in voting, other than in excepted cases, by the Council and Body of Delegates; and insertion in Article 15 of the following safeguard for national jurisdiction in domestic policy:—

If the difference between the parties shall be found by this Executive Council or the Body of Delegates to be a question which by international law is solely within the domestic juris-

<sup>6</sup> The texts of these memoranda are given in *Taft Papers on League of Nations*, edited by Theodore Marburg and Horace E. Flack, pp. 321-27.

diction and polity of one of the parties, it shall so report and not recommend a settlement of the dispute.

Except for the Monroe Doctrine article, to be incorporated later, all of these reservations had been written into the text of the Covenant before the committee on revision was appointed. The new paragraph (now number 8) in Article 15 was, indeed, drafted by Wilson in almost the identical language suggested by Taft. It may be noted that in summation of these reservations the former Republican president wrote to the delegation at Paris that "Monroe Doctrine reservation alone would probably carry the treaty but others would make it certain."<sup>7</sup>

The second of these three critical commentaries from responsible Republican leaders came in the form of a speech delivered by Mr. Hughes before the Union League Club of New York, of which he was then president, on March 26, 1919, the day the Commission in Paris completed its thirteenth session. An adequate summary of this speech, as was the case with all important expressions of American opinion on the Covenant during the later stages of its drafting, was immediately transmitted to the delegation in Paris.<sup>8</sup> It urged an explicit provision requiring unanimity in decisions taken by the Council and Body of Delegates; limitations on the field of League activity in order to safeguard national rights in matters accepted as domestic policy (mentioning immigration and tariff laws); formal recognition by the Covenant of the Monroe Doctrine; omission of the guarantee for protection of territorial integrity in Article 10; specification of the voluntary nature of mandates; and provision for right of withdrawal. At the time of this speech by Mr. Hughes all of his criticisms had already been met by the

<sup>7</sup> The same, p. 323.

<sup>8</sup> This summary is given by Miller, Vol. I, pp. 382-84. Reference may also be made to the *New York Times*, Mar. 27, 1919.

negotiators at Paris, except for the Monroe Doctrine amendment, then in preparation, and the requested revision of Article 10, to the weakening of which the French delegation would almost certainly have refused consent, even if President Wilson had been disposed to urge its revision.

The third important American critique of the Covenant presented at this period was in the form of a letter from Elihu Root to Will H. Hays, then chairman of the Republican National Committee, in which under date of March 29, 1919 the veteran statesman of that party gave his views on the Covenant and added as annexes six proposed amendments. The texts of these were cabled to the American delegation by the Department of State a day before the date carried on the letter.<sup>9</sup> It is to be noted that the Root suggestions differed fundamentally from those of Hughes and Taft inasmuch as the former, in contrast to the two latter, criticized the draft covenant more for attempting too little than for attempting too much. Unquestionably the Root amendments, if adopted *in toto*, would have increased rather than diminished the American opposition to ratification of the Covenant.<sup>10</sup>

The first of the Root amendments, for example, provided for compulsory arbitration of all disputes "of a justiciable character," with the further provision that "the Powers so referring to arbitration agree to accept and give effect to the award of the tribunal." It was a decade and more after the Peace Conference before Great Britain, France, and Italy, by their gradual acceptance of the provisions of the optional clause in the world court

<sup>9</sup> Compare Miller, Vol. I, p. 377. The text of Root's letter to Hays, as also that of a letter from Root to Lodge, concerning the Covenant, under date of June 19, 1919, is found in *American Journal of International Law*, Vol. 13, No. 4, pp. 580 ff.

<sup>10</sup> Compare Miller, Vol. I, pp. 379-82.

statute, agreed to carry the principle of obligatory arbitration this far.<sup>11</sup> Japan has not yet done so and the recalcitrant attitude of the United States towards this principle is probably still as strong as was the case in 1919.

If Mr. Root's first amendment was premature his second proposal was shown by the event to be superfluous. This would have stipulated the summoning by the Council of periodic conferences "for the purpose of reviewing the condition of international law and of agreeing upon and stating in authoritative form the principles and rules thereof." After elaborate preliminary work a "First Conference for the Codification of International Law" was convened under League auspices early in 1930. Whether or not "codification" can best be secured in this manner, it is certain that the League is under the existing Covenant empowered to call successive conferences for that purpose.

The third Root amendment, designed to prevent "a surrender of the Monroe Doctrine," was covered in more explicit phraseology later. The fourth amendment, which would have limited the unqualified obligation under Article 10 to the first five years of the League's life, was disregarded.

The fifth of the amendments suggested to the Republican National Committee by the doyen of that party was "another illustration of Mr. Root's willingness to go far beyond the lengths to which the Senate would have gone, even in 1919."<sup>12</sup> It suggested that the Advisory Commission established under Article 9 of the Covenant—

shall have full power of inspection and verification personally and by authorized agents as to all armament, equipment, munitions and industries referred to in Article 8.

<sup>11</sup> Italian ratification of the optional clause was announced at the twelfth session of the League Assembly, on Sept. 8, 1931, twelve and one-half years after Mr. Root's suggestion was made.

<sup>12</sup> Miller, Vol. I, pp. 381-82.



When it is remembered that Article 8 then, as now, contained reference to the "grave objections" to private manufacture of "munitions and implements of war," which under modern conditions form an exceedingly comprehensive list, the revolutionary nature of Mr. Root's fifth amendment is apparent. This suggestion, as the former Secretary of War and of State pointed out in his letter to Will Hays, would have put in the Covenant the French amendment for a League military control commission which both President Wilson and Lord Robert Cecil opposed at Paris as impossible of acceptance by the public opinion of their respective countries. Mr. Root's proposal encouraged French leadership to continue to fight for the objective of definitive League supervision over national military equipment. But the reader need only ask himself whether the provision would have been accepted by the United States Senate either in 1919 or today.

The last of Mr. Root's six amendments provided for "a general conference of members of the League to meet not less than five nor more than ten years after the signing of this convention," at which conference the Covenant would be open for revision, and at which time a right of withdrawal from membership, on one year's notice, would become operative. The right of withdrawal had been stipulated in the draft covenant before this suggestion was made, and the annual meetings of the Assembly provide periodic opportunity for the revision of the Covenant through amendment.

At the sessions of the committee on revision, therefore, little additional attention to suggestions from the United States seemed necessary. For the most part such suggestions had already been incorporated in the draft covenant, while certain other recommendations, such as compulsory arbitration and a military control commission, had already been considered and deemed imprac-

ticable. The outstanding exceptions to these categories were the Monroe Doctrine reservation and the question of excising, or at least softening, Article 10. The former of these was held up by Mr. Lloyd George's insistence on a prior Anglo-American agreement regarding the naval building program of the United States.<sup>13</sup> Article 10, on the other hand, was kept in the draft *in statu quo* largely on the insistence of President Wilson, an attitude to which French approval of the guarantee as worded of course contributed. The question of its modification was raised informally by Lord Robert Cecil on the afternoon of April 1, but confronted by the outwardly firm position of the American delegation he withdrew his suggestion of change.<sup>14</sup> So Article 10 came through into the final Covenant as worded in the draft of February 14.

A certain amount of rather drastic reordering of the Covenant articles was done by the committee on revision. For instance, former Article 7 was made Article 1 in order to lay down the conditions of membership at the outset. Amendments agreed to in principle at the eleventh, twelfth, and thirteenth meetings of the full Commission were also inserted by the committee at logical places, as when the withdrawal clause was made the last paragraph of the new Article 1. There was some redrafting to clarify the text without alteration of meaning, and a number of interesting, but essentially secondary, changes in phraseology were made. Elimination of the adjective in the phrase "Executive Council" has been mentioned. Somewhat similar was the substitution of the word "Assembly" for the cumbersome expression "Body of Delegates," heretofore employed for the inclusive representative organ. This change was suggested for the first time in the paper of amendments presented by

<sup>13</sup> Compare Miller, Vol. I, Chap. XXX.

<sup>14</sup> Compare Miller, Vol. I, pp. 404 and 412.

the British to the committee on revision, and was accepted immediately.

#### ALTERATIONS BY THE COMMITTEE ON REVISION

The alterations of constitutional significance made *de novo* by the committee on revision, while fairly numerous, may be quickly summarized.<sup>15</sup> There were, in all, ten such changes.

(1) *Article 3*: The Assembly was empowered to "deal at its meetings with any matter within the sphere of action of the League, or affecting the peace of the world." The powers of the Council had previously been defined in exactly the same phraseology but those of the Assembly had heretofore been limited to "the sphere of action of the League."

(2) *Article 4*: Each State possessing Council membership was specifically limited to one representative thereon, and the article was redrafted to make clear that approval of the majority of the Assembly is a prerequisite to any increase in either permanent or non-permanent membership.

(3) *Article 6*: At the close of the thirteenth session of the Commission the wording regarding the appointment of the Secretary-General was: "The first Secretary-General shall be the person named in the protocol hereto, and his successor shall be chosen by the Body of Delegates on the nomination of the Executive Council." Hurst and Miller sought to make a fundamental change in this arrangement by providing that "The Secretary-General (including the first incumbent) shall be appointed by the Council." The committee on revision re-established

<sup>15</sup> The best available source for detailed examination of these changes is a British memorandum on the redraft made by the committee on revision, reprinted in Miller, Vol. I, pp. 415-18. The text of the Covenant as it came from the drafting committee is also given by Miller, Vol. II, Document 30.

parliamentary control over this important officer, but with an alteration in the emphasis so as to give the power of appointment to the Council, with Assembly approval. The wording agreed upon then is that of Article 6(2) of the final Covenant:

The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

(4) *Article 13*: An express agreement against resort to war with nations complying with an arbitral award was inserted in the last paragraph of this article, being the phrase italicized in this final wording:

The members of the League agree that they will carry out in full good faith any award that may be rendered, *and that they will not resort to war against a member of the League which complies therewith.* In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto.

(5) *Article 14*: The famous world court advisory opinion clause, in wording identical with that now forming the last sentence of Article 14 of the Covenant, was added. There had been no specific attribution of an advisory function to the court prior to the redrafting work of the committee on revision. The definitive insertion was instigated by Hurst and approved by Miller at their conferences just prior to the meetings of this committee.<sup>16</sup> That establishment of the court should be the subject of a separate treaty was also made clear by insertion of the words here italicized:

The Council shall formulate *and submit to the members of the League for adoption* plans for the establishment of a permanent court of international justice.

(6) *Article 15*: Provisional introduction of the "gap" clause, now paragraph 7 of this article, was approved at

<sup>16</sup> Compare Miller, Vol. I, p. 391.

the final meeting of the Commission.<sup>17</sup> Heretofore no definite provision had been made for the situation arising from a divided Council report on a dispute submitted to it.<sup>18</sup> A British amendment, submitted to the committee on revision, frankly recognized the right of States, in the last resort, to go to war in behalf of a party deemed to be the victim of aggression, and to do this against a majority (but not against a unanimous) opinion of the Council. This British amendment was identical in wording with that finally adopted for paragraph 7 of Article 15. Ten years were to pass before, following the adoption of the Pact of Paris, serious efforts were made by the League to close this gap in order to eliminate any legalization of war under the Covenant.

(7) *Article 16*: The final paragraph of this article, providing for expulsion from the League of a member State found guilty of violating the Covenant, was inserted in entirety, and in its present wording, by the committee on revision. It is specifically provided here that the State on trial shall be excluded in a Council vote on the issue of expulsion, but it is left questionable whether the Council acting in this manner has the juridical power to determine what constitutes "violation" of the Covenant. In practise, the issue would doubtless be referred to the World Court for an advisory opinion.

(8) *Article 23*: On British proposal, the clause italicized below was added to paragraph "a" of the article. The purpose of this change, in the wording of the memorandum by the British delegation on the redrafting done by the committee on revision, was "to give the organization to be set up by the Labor Convention the prestige of mention in the Covenant in accordance with the desire of the Labor Commission." This insertion was one of notable constitutional importance, for it seems clearly to

<sup>17</sup> See below, p. 195.

<sup>18</sup> Compare pp. 104 and 134 above.

establish the subordinate position of the International Labor Organization as a definite League agency, rather than a truly autonomous body. The question is thereby raised as to whether, in strict legality, a nation can belong to the International Labor Organization without also possessing League membership. Though this issue has never been pressed to conclusion it is perhaps arguable that Brazil did not actually sever membership in the League in 1928, but rather suspended most of the functions of membership, since she maintained active official participation in the work of the International Labor Organization. The paragraph in the final Covenant, with the phrase as added by the committee on revision in italics, reads:

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the members of the League:

(a) will endeavor to secure and maintain fair and humane conditions of labor for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, *and for that purpose will establish and maintain the necessary international organization. . . .*

It may be noted at this point that on April 5, three days after the committee on revision had completed its sessions, there was added to this article, on British request and with American consent—no other delegation being then consulted—the present paragraph “f” of Article 23:<sup>19</sup>

(f) will endeavour to take steps in matters of international concern for the prevention and control of disease.

From this short paragraph all the far-flung public health activities of the League have emanated. And the health work of the League has, of late years, been of increasing value as an entering wedge for the introduction of more political activities.<sup>20</sup>

<sup>19</sup> Compare Miller, p. 408.

<sup>20</sup> Compare p. 189 below.

(9) *Article 24*: A substantial modification in the second part of this article, as proposed by the British at the thirteenth meeting of the Commission,<sup>21</sup> was made by the committee on revision. As shown by a textual comparison, this revision sharply modified the powers which the British at first proposed for the Secretariat as a clearing house of information on subjects regulated by international convention:

#### ARTICLE 24(2)

##### THE BRITISH PROPOSAL

In all matters of international interest which are regulated by general conventions but which are not placed under the control of special international bureaux or commissions, the Secretariat of the League shall act as a central organization for the collection and distribution of information and for securing the effective observance of such conventions if the States thereto consent.

##### THE FORM ADOPTED

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

(10) *Article 25*: This "Red Cross article," which cannot be said to have had any marked practical value and the purposes of which could doubtless have been as well forwarded under the opening clause of the preamble, was inserted in the Covenant *in toto* by the committee on revision. The formal proposal for this came from Mr. Henry P. Davison, chairman of the Committee of Red Cross Societies, just prior to the meetings of the committee on revision. A letter from Mr. Davison to Colonel House on the subject contained two alternative draft articles which are of more than historic interest because

<sup>21</sup> See pp. 171-72 above.

they laid down the principle that national Red Cross organizations should interest themselves, individually and collectively, in a broader field than the relief of natural calamities.<sup>22</sup> This principle, which the American Red Cross appeared to repudiate a decade later by its attitude towards emergency unemployment relief in the United States, was incorporated in the final Covenant by the committee after condensation and recasting by Mr. David Hunter Miller.<sup>23</sup>

An interesting result of the introduction of the Red Cross article was the addition to the Covenant of Article 23 (f), on international health activities. Certain officials in the British Ministry of Health were fearful lest the sanction given the Red Cross should be interpreted as putting matters of public health too much in the control of a private organization. It was to give the League a mandate to work through national health ministries in public health matters that paragraph "f" of Article 23 was inserted, and at further British request the Red Cross article was placed *after* Article 23 in the ordering. The organic act under which the far-flung health work of the League has developed was, therefore, in origin primarily an offset to the eleventh-hour special consideration given the Red Cross.

#### THE SELECTION OF GENEVA

The full Commission on the League of Nations re-assembled the night of April 10 to consider the text of the Covenant as reported back from the committee on revision. The first ten articles of the committee text were examined at this meeting, the only changes in language being insertion of "Geneva" to fill the blank which had

<sup>22</sup> For text of these drafts see Miller, Vol. I, pp. 400-01. Dr. William H. Welch originated the proposal which Mr. Davison took up with Colonel House.

<sup>23</sup> Compare the present text, in Appendix A.



been left for designation of "the Seat of the League" in Article 7, and the addition of the Monroe Doctrine amendment.

Responsibility of appraising the claims of the cities anxious to become the headquarters of the League, for which honor Brussels, The Hague, and Geneva were the leading candidates, had been entrusted to a sub-committee composed of House, as chairman, Orlando, Makino, and Smuts. This committee on March 29 decided unanimously in favor of Geneva and asked for certain assurances, promptly complied with, from the Swiss government. Part of the committee's note to M. William Rappard, Swiss representative at the Peace Conference, may be quoted as indicating contemporary opinion on the anticipated physical development of the League:

. . . It must be borne in mind that with the growing importance and influence of the League in the future international relations of the world, the Seat of the League will require a corresponding expansion, and that the requirements of the League in this respect may have to be enlarged from time to time. In fact, in course of time a new international world capitol may arise, and the space requirements for the Seat may therefore in time become very considerable. It is not the intention to put the Swiss government to any expense, but its authority and good-will are required to place at the disposal of the League such land as may be required from time to time for the above purposes.<sup>24</sup>

When the committee at its fourteenth meeting reached Article 7 of the draft covenant, Orlando formally proposed the selection of Geneva. He was strongly supported by Cecil and Wilson, both of whom stressed the desirability of locating the League's headquarters in a center which had preserved neutrality during the war. M. Hymans, with French support, again argued in behalf

<sup>24</sup> Compare William E. Rappard, *Uniting Europe*, pp. 229 ff.; also Charles Seymour, *The Intimate Papers of Colonel House*, Vol. IV, p. 414, and Miller, Vol. I, pp. 441-42. Miller appears to be in error in stating that Orlando was chairman of the sub-committee on the Seat of the League.

of Brussels, maintaining that "the foundation of the League of Nations was intimately connected with the war. We should not therefore seek to blot out its memories, but, on the contrary, to uphold them as an example of value to the cause of right and of humanity."<sup>25</sup>

The vote after the discussion resulted in twelve of the nineteen members of the Commission favoring the selection of Geneva, which was accordingly inserted in the first paragraph of Article 7. For some time, however, the advocates of Brussels continued to hope for an eventual settlement in that city and after the League was formally established occasional movements in favor of removal to still other centers, notably Vienna, were perceptible. Not until the laying of the cornerstone of the permanent League buildings at Geneva on September 7, 1929 could it be definitely said that this Swiss city would continue to be the Seat of the League.

#### THE MONROE DOCTRINE AMENDMENT

When the reading reached Article 10, President Wilson proposed the Monroe Doctrine amendment as a second paragraph in that article. Its wording then was identical with that of Article 21 as it stands in the Covenant today:

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace.

The above formula differed in one fundamental particular from the various draft amendments safeguarding the Monroe Doctrine which had been suggested by Taft, Root, and other prominent American leaders. These sought to define the Monroe Doctrine without naming it. The British, on the contrary, had suggested naming it without any attempt at definition, and it was this more

<sup>25</sup> *Minutes* (English), fourteenth meeting, p. 91.

subtle strategy which President Wilson and Colonel House adopted in drafting the amendment.<sup>26</sup> In the debate at the fourteenth meeting Lord Robert Cecil made clear that the phraseology adopted merely recognized the existence of the doctrine, neither adding to nor subtracting from such validity as it possessed prior to formulation of the League Covenant. His remarks, as summarized in the *Minutes*, are given below. They were destined to prove of very great importance and value to the Council when, more than nine years later, the government of Costa Rica asked the League to define its understanding of the Monroe Doctrine, in view of the formal mention given in the Covenant.<sup>27</sup>

I wish to say something about this amendment, not to oppose its adoption but to explain its meaning, and I would like to have my remarks recorded in the *procès-verbal*. I understand this to mean, oddly enough, exactly what it says: "Nothing in this Covenant shall be deemed to affect the validity of" various international engagements. It gives to these engagements no sanction or validity which they have not hitherto enjoyed. It accepts them as they are. And in particular it accepts the Monroe Doctrine as it is, a doctrine which has never been expressed in terms. Indeed, it is well to leave it undefined and as an example, for any attempt at definition might extend or limit its application. Yet in spite of the fact that it has never been definitely formulated, it would not be common sense to deny that such a doctrine has existed, has been acted upon, and has been accepted by other States.

What I would understand this amendment to say is what I believe to be implicit in the Covenant without saying. It says what I believe to be true, that nothing in the Covenant interferes with international understandings like the Monroe Doctrine. It makes no understanding or alleged understanding either more valid or less valid. It accepts them as they are.

The *Minutes* of the fourteenth meeting show that the one Latin American on the Commission, Senhor Epitacio

<sup>26</sup> Compare Seymour, Vol. IV, p. 425.

<sup>27</sup> See below, pp. 330-34.

of the Covenant. To this argument President Wilson could make no effective reply, except to intimate that specific safeguarding of the doctrine was the price demanded by public opinion in the United States in return for undertaking a solemn obligation "to render aid in European affairs when the territorial integrity of any European State is threatened by external aggression."<sup>30</sup> The differences here were bridged by Lord Robert Cecil, who first explained that the Monroe Doctrine was to be mentioned in the Covenant for the same reason that the unanimity rule was there specified—"to make an implicit principle perfectly clear"—and then suggested that the amendment be separated from Article 10 so as to assure French opinion that there was no intention of weakening that article. On this understanding the amendment was adopted, to find its eventual place as Article 21 of the Covenant.

#### THE FINAL MEETING OF THE COMMISSION

Although the final meeting of the Commission sat from half-past eight on the night of April 11 until nearly one o'clock the following morning, very few further changes were made in the text as reported from the committee on revision.

The Japanese amendment to Article 12, providing for suspension of military preparations by the parties to a dispute during the period of inquiry thereon,<sup>31</sup> was withdrawn as a result of the criticism that this would induce a higher degree of military preparation in normal times. A similar fate overtook the Swiss amendment to Article 16 which would have made it optional for member States to permit the passage through their territory of the forces of other League members "co-operating to protect the covenants of the League."<sup>32</sup>

<sup>30</sup> *Minutes* (English), fourteenth meeting, p. 95.

<sup>31</sup> See pp. 161-62 above.

<sup>32</sup> Compare pp. 142-44 above.

The "gap" in the Covenant (paragraph seven of Article 15), provisionally inserted by the committee on revision,<sup>33</sup> was formally approved, in spite of the significant comment of M. Bourgeois that:

The whole idea of obligation has now disappeared. It will, therefore, be necessary to continue and to conclude separate alliances, inasmuch as the League admits its inability to offer a formal guarantee of protection to its own members.<sup>34</sup>

Although the Monroe Doctrine amendment had been accepted at the previous session, leaving only the question of the best place for its incorporation in the Covenant, reopening of debate on the whole subject was permitted at the fifteenth meeting. A new French draft amendment, designed to take the place of that already approved, was discussed and rejected. Its major point was to stipulate that special understandings "such as the Monroe Doctrine" should be regarded as valid "in so far as they do not in any way prevent the signatory States from executing their obligations under this Covenant." On President Wilson's protest that this phraseology would tend to cast doubt on the good faith of the United States in signing the Covenant, the following significant opinions as to the right of the League to interfere in purely American disputes were extracted from him:

Mr. Kramar asked whether in case of a dispute between Paraguay and Uruguay the League of Nations would have the right to come to the aid of whichever of the two States was supported by the decision of the Executive Council.

President Wilson replied in the affirmative.

Lord Robert Cecil believed that the Monroe Doctrine would in no wise prevent the forces of an European State from going to America in order to defend the rights of the oppressed. The sole object of the Monroe Doctrine was to prevent any European Power from acquiring any influence, territory, or political supremacy on the American continent. The idea that

<sup>33</sup> See pp. 185-86 above.

<sup>34</sup> *Minutes* (English), fifteenth meeting, p. 101.

the Monroe Doctrine would prevent the Executive Council, in the execution of an unanimous decision, from acting in Europe, America, Africa, or Asia, was a perversion of the Monroe Doctrine, and citizens of the United States would be the first to disclaim it.

President Wilson agreed.<sup>35</sup>

On the suggestion of Wellington Koo, and to satisfy doubts aroused in the mind of the Chinese spokesman by the sanction given to "regional understandings," a significant insertion was made in the first paragraph of Article 20, immediately preceding the place now allotted the Monroe Doctrine article. The insertion, bringing Article 20 to its present form, is capitalized below.

The members of the League severally agree that this Covenant is accepted as abrogating all obligations OR UNDERSTANDINGS *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

The agreement to abrogate "all understandings" inconsistent with the Covenant set at rest the Chinese misgivings as to the desirability of giving a tacit recognition to other "regional understandings like the Monroe Doctrine." Without this revision of Article 20, the wording of Article 21 might possibly have been invoked in behalf of much of the foreign political encroachment in China, especially that of Japan in Manchuria, sometimes justified as the operation of a "Japanese Monroe Doctrine." With the revision, the legal basis of the Japanese claim to a special position in Manchuria, in so far as founded on such "understandings" as the notorious Twenty-one Demands of 1915, was weakened to the extent that these can be shown to be inconsistent with the terms of the Covenant.<sup>36</sup>

The only other alteration made by the final meeting of the Commission was the insertion of the second paragraph

<sup>35</sup> *Minutes* (English), fifteenth meeting, p. 103.

<sup>36</sup> Compare Felix Morley, *Our Far Eastern Assignment*, pp. 4-5.

of Article 26—the last paragraph in the Covenant. This article provided that amendments to the Covenant would take effect when ratified by all the States represented on the Council and by a majority of those composing the Assembly. As already noted<sup>87</sup> it would thus be possible for a State not on the Council, and of the minority in the Assembly, to be bound as a League member by an amendment which its national legislature had rejected. During the fifteenth meeting Senhor Pessoa pointed out that such circumstances would, in the case of his own country, violate the Brazilian Constitution. To meet this objection, equally valid in the case of other countries, the following provision was made part of Article 26:

2. No such amendment shall bind any member of the League which signifies its dissent therefrom, but in that case it shall cease to be a member of the League.

This additional paragraph was not a perfect solution of the difficulty, for it failed to establish a time limit in which the dissent should be signified. Thus it is now theoretically possible for a League member which has never ratified an amendment to refuse at any time to be bound thereby even though it may have been in effect for years. To meet this contingency the Second Assembly voted to substitute for Article 26(2) a provision that refusal to accept must be sent to the Secretary-General "within a year" after an amendment has gone into effect.<sup>88</sup> This proposed amendment, however, has not yet received all the requisite ratifications.

#### JAPAN'S DEFEAT ON RACIAL EQUALITY

Towards the close of the fifteenth meeting a difficult situation was created by the Japanese endeavor to insert in the preamble of the Covenant another form of the racial equality clause which the Commission at its tenth

<sup>87</sup> See p. 107 above.

<sup>88</sup> *Official Journal*, S. S. No. 6, October 1921, pp. 9-10.

meeting had rejected as part of the body of the Covenant.<sup>39</sup> The proposal as put forward by Baron Makino was for addition of the clause italicized below to the list of general principles which the preamble names as conducive to the promotion of international co-operation and the achievement of international peace and security:

- by the acceptance of obligations not to resort to war,
- by the prescription of open, just and honorable relations between nations,
- b) the endorsement of the principle of equality of nations and just treatment of their nationals,*
- by the firm establishment of the understandings of international law as the actual rule of conduct among governments, and
- by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another.

Before introducing this amendment Baron Makino read a persuasive statement which emphasized the assertion that the proposal in no way encroached on the internal affairs of any nation.<sup>40</sup> Yet it was perfectly apparent that no nation maintaining special Asiatic restrictions in its immigration policy, for instance, could conscientiously subscribe to the clause sponsored by the Japanese. To oppose it, on the other hand, was to voice objection to the fundamental principle of equality between nations on which the whole structure of the League was being based. The situation was not made easier by the fact that after Lord Robert Cecil had opposed the amendment in behalf of his government<sup>41</sup> it was supported in successive speeches by the Italian, French, Greek, Czech, and Chinese delegates. On a vote demanded by Baron Makino

<sup>39</sup> See pp. 122-23 above.

<sup>40</sup> The text of this statement is in *Minutes* (English), fifteenth meeting, pp. 105-06.

<sup>41</sup> Cecil is said to have stated that he was "personally entirely in accord with the idea advanced by the Japanese delegation." Compare Miller, Vol. I, p. 461.



the Japanese amendment was carried by eleven affirmative votes out of the seventeen delegates present.<sup>42</sup> In his capacity of chairman, however, President Wilson declared that under the unanimity rule the amendment had failed of adoption, at least one of the governments (Great Britain) represented in the Commission having formally opposed the proposal.<sup>43</sup>

Although there was at the time some question of the validity of Mr. Wilson's action in rejecting the Japanese amendment after its passage by a majority vote, there can be little doubt that the decision was technically correct. At the third meeting of the Commission Lord Robert Cecil had stated without protest that "all international decisions must by the nature of things be unanimous"<sup>44</sup> and the Commission had indorsed this viewpoint by writing the unanimity rule into Article 5 (1) of the Covenant. It would scarcely have been possible for the Commission to stipulate the unanimity rule for decisions taken under the Constitution of the League, and not to observe that rule in drafting this Constitution.

There was, however, one case in which the Commission acted on a majority decision numerically almost identical with that by which the Japanese amendment to the preamble was favored. At the fourteenth meeting Geneva was chosen as the Seat of the League by twelve votes out of the nineteen delegates present.<sup>45</sup> This was referred to by President Wilson in explaining his rejection of the Japanese amendment, with the remark that "in that case it had been necessary to accept the opinion of the

<sup>42</sup> General Smuts, for the British Empire, and M. Hymans, for Belgium, were absent from the final meeting of the Commission.

<sup>43</sup> According to Colonel House, President Wilson at first wanted to accept the Japanese amendment to the preamble, but on the advice of his colleague decided "to stay with the British." Seymour, Vol. IV, p. 428. Cecil, Wilson, House, Dmowski (Poland), Reis (Portugal), and Danielopol (Roumania) composed the six delegates who abstained from voting for the Japanese amendment.

<sup>44</sup> See p. 85 above.

<sup>45</sup> See p. 191 above.

majority inasmuch as no other procedure was possible if the question was to be decided at all.<sup>46</sup>

This observation, drawing attention to the incompatibility of a strict observance of the unanimity rule with the transaction of essential business, has proved prophetic. As will be noted later, abandonment of strict observance of the unanimity rule began in the Assembly because of the impossibility of letting one or two recalcitrant delegations sabotage the annual budget of the League. The more business-like League procedure becomes—and the tendency is unquestionably in the direction of concrete action rather than in that of purely inconsequential debate—the more probable is a progressive encroachment on the sanctity of the unanimity rule.<sup>47</sup>

It may be noted that the French delegation could have prevented insertion of the Monroe Doctrine article in the Covenant as readily as the British blocked the Japanese amendment envisaging "racial equality." That the French delegation merely entered reservations on this point, ultimately withdrawn, is perhaps evidence in support of the assertion that "the French did not care anything about their amendment to the Monroe Doctrine clause but simply thought it was a good thing to trade with."<sup>48</sup>

After midnight, just before the final adjournment of the Commission, there was some rather hurried discussion on certain outstanding matters which still awaited final decision. First, Larnaude and Miller were appointed a committee to bring the French text of the Covenant "into complete substantial accord with the English."<sup>49</sup>

<sup>46</sup> *Minutes* (English), fifteenth meeting, p. 107.

<sup>47</sup> Compare pp. 590 ff. below.

<sup>48</sup> Attributed to Bourgeois. See Miller, Vol. I, pp. 453-54.

<sup>49</sup> This instruction, given Miller by Lord Robert Cecil the day following the fifteenth meeting of the Commission, is convincing evidence of the fact that the English text of the Covenant was decided upon first and the French equivalent harmonized with it later. They have equal validity

Next, through failure to agree on the method to be followed in appointing the first four non-permanent members of the Council, this duty was left to the Peace Conference. Cecil suggested that the proportion of Allied Powers to Neutrals among these four might be fixed at three to one. This was done a few days later when he named them, with Miller's co-operation, for the formal approval of the full Peace Conference.<sup>50</sup>

The Commission then confronted the question of selecting the neutral States which should be invited to accede to the Covenant on its approval, thereby becoming original members of the League. It had already been decided to name these neutrals in an annex to the Covenant<sup>51</sup> and Cecil now suggested that the list "might fairly include the thirteen neutral States who had stated their views before the Commission." To these thirteen the invitations were eventually limited, thus pointedly excluding Mexico from original League membership, a step which both Cecil and Wilson had earlier approved.<sup>52</sup> More than twelve years later, when the Twelfth Assembly unanimously adopted a resolution inviting Mexico to accede to the Covenant, Viscount Cecil, as first British delegate, made the following public atonement for the action which had for many years kept Mexican official opinion excusably hostile to the League:

. . . this proposal is the correction of an omission that was made at Paris when the formation of the League was being considered. That omission has lasted much too long, and I am not sure that I ought not to acknowledge that I was in part, I suppose, responsible for it. It therefore gives me particular

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under the provision of the Treaty of Versailles that its "French and English texts are both authentic." The full story of the evolution of the French text is told by Miller in Vol. I, Chap. 35.

<sup>50</sup> See p. 351 below.

<sup>51</sup> See p. 118 above.

<sup>52</sup> See p. 328 below.

pleasure at this moment to take part in remedying an omission which never should have been made.<sup>53</sup>

Finally it was suggested, subject to the approval of the Peace Conference, that a committee of seven, including two neutral representatives, be nominated by the President of the Commission to proceed with the provisional organization of the League and plans for its establishment at Geneva pending the summoning of the initial meetings of the Council and Assembly.

#### THE FINAL REVISIONS

Between the last meeting of the Commission on the night of April 11 and the adoption of the Covenant by the plenary session of the Peace Conference on April 28, a few very minor alterations were made in the revised text. Most of these came at the instance of those entrusted with harmonizing the English and French texts and in no way affected the meaning of the document. There was, for instance, some recasting of the paragraphing to make these divisions shorter and more numerous, with the result that in the Covenant as it stands today a majority of the paragraphs are composed of single sentences while only three paragraphs contain as many as three sentences. These alterations were circulated to the members of the Commission and, meeting with no objections, were incorporated in the draft prepared for final action by the Peace Conference.

Of greater importance during this period was the elimination of the blank which had been left in Article 4 with reference to the first four non-permanent members of the Council, and the naming of the first Secretary-General of the League. Belgium, Brazil, Spain, and Greece were tentatively selected by the British and Amer-

<sup>53</sup> *Verbatim Record*, Twelfth Assembly, Sept. 8, 1931.

ican leaders for these Council posts, a choice confirmed without question by the Peace Conference on April 28.<sup>54</sup> The gap in the annex to the Covenant was filled by inserting as first Secretary-General, the name of Sir James Eric Drummond, at that time secretary to Mr. Arthur J. Balfour. Drummond for some time had been steadily gaining in favor for this post. His wise and diplomatic handling of a most important office during the formative years of the League has richly justified the choice then made.

Aside from these insertions certain changes of moment were made in the Covenant after adjournment of the Peace Conference Commission on the League. These resulted from the British anxiety to remove all doubts as to dominion eligibility to election as non-permanent members of the Council, a right which was questionable under the wording of the first paragraph of Article 4 as reported out by the Commission:

The Council shall consist of representatives of the United States of America, of the British Empire, of France, of Italy and of Japan, together with representatives of four other States which are members of the League. These four States shall be selected by the Assembly from time to time in its discretion. Until the appointment of the representatives of the four States first selected by the Assembly, representatives of . . . shall be members of the Council.

Use of the word "States" in this paragraph and elsewhere in the Covenant, could be said to imply a discrimination against the British dominions which, whatever their legal status today, in 1919 could not properly have been defined as sovereign States. In consequence the British delegation, a few days after termination of the Commission's work, sought the aid of the American delegation in changing the word "State" to the phrase "mem-

<sup>54</sup> Compare below, p. 205.

bers of the League," not merely in Article 4, but also in several other articles of the Covenant.<sup>55</sup>

The American delegation was at first disposed to demand another meeting of the Commission for consideration of these changes. But President Wilson finally agreed to the circulation of a memorandum by the Commission, which he promised not to oppose, suggesting as "corrections in the present draft of the Covenant" the alterations desired by the British. The French thereupon objected to the substitution of "members of the League" for "States" both in Article 8(2) and Article 16(1), presumably because the change might have had a limiting effect on League control in both cases. In consequence the British were compelled to be satisfied with the alteration in Article 4(1) and other less important places. The substitution in the first paragraph of Article 4, however, enabled the British to claim eligibility to Council membership for the self-governing dominions, and therefore satisfied the essence of their claim.<sup>56</sup>

There was also some French criticism of the nomination of the committee of seven to proceed with the provisional organization of the League, as had been suggested at the final meeting of the Commission. Perhaps from anxiety lest France might not be included among these seven Powers<sup>57</sup> it was suggested by the delegation of that country that the number be increased to eleven. As a compromise it was agreed that the organization committee should be composed of nine members, these being representatives of each of the Powers represented on the League Council at its establishment. In consequence the resolution regarding the launching of the League adopted by the plenary session of the Peace Conference read as follows:

<sup>55</sup> Compare Miller, Vol. I, pp. 478 ff.

<sup>56</sup> Compare pp. 344 ff. below.

<sup>57</sup> Compare Miller, Vol. I, p. 485.

The Conference, having considered and adopted the amended Covenant presented by the Commission on the League of Nations, resolves:

1. That the first Secretary-General of the League shall be Honorable Sir James Eric Drummond, K.C.M.G., C.B.

2. That until such time as the Assembly shall have selected the first four members of the League to be represented on the Council in accordance with Article 4 of the Covenant, representatives of Belgium, Brazil, Greece, and Spain shall be members of the Council.

3. That the Powers to be represented on the Council of the League of Nations are requested to name representatives who shall form a committee of nine to prepare plans for the organization of the League and for the establishment of the Seat of the League, and to make arrangements and to prepare the agenda for the first meeting of the Assembly. This committee shall report both to the Council and to the Assembly of the League.

#### ADOPTION BY THE PEACE CONFERENCE

In the adoption of the Covenant itself by the Peace Conference only one change was made, on motion of President Wilson. This was the insertion italicized below in the unanimity rule laid down in Article 5 (1). The insertion was necessitated by the presence elsewhere in the Treaty of Versailles of provisions permitting the Council to act by a majority vote:

Except where otherwise expressly provided in this Covenant *or by the terms of the present Treaty*, decision at any meeting of the Assembly or of the Council shall require the agreement of all the members of the League represented at the meeting.<sup>58</sup>

<sup>58</sup> Compare, for instance, Article 40 of the annex to Section IV (Saar Basin) which states that: "In all matters dealt with in the present annex, the decisions of the Council of the League of Nations will be taken by a majority." Similarly, Article 213 of the treaty provides that "so long as the present treaty remains in force, Germany undertakes to give every facility for any investigation which the Council of the League of Nations acting if need be by a majority vote, may consider necessary. These derogations of the unanimity rule in cases where the penalization of Germany is at issue are one of the most striking instances of improper partiality sanctioned by the Covenant.

In the speeches preceding the final adoption of the Covenant, both the Japanese and French delegates again spoke persuasively in favor of the amendments which they had fruitlessly backed in the Commission. The closing words of Baron Makino's plea for formal recognition of the principle of the equality of all League members and of their subjects were destined to recur to mind as the Manchurian crisis of the autumn of 1931 revealed the depth of Japanese mistrust of League intervention in a part of the world where the interests of that Power are vitally concerned:

If just and equal treatment is denied to certain nationals, it would have the significance of a certain reflection on their quality and status. Their faith in the justice and righteousness which are to be the guiding spirit of the future international intercourse between the members of the League may be shaken, and such a frame of mind, I am afraid, would be most detrimental to that harmony and co-operation, upon which foundation alone can the League now contemplated be securely built. It was solely and purely from our desire to see the League established on a sound and firm basis of goodwill, justice, and reason that we have been compelled to make our proposal. We will not, however, press for the adoption of our proposal at this moment.<sup>59</sup>

M. Bourgeois argued at length for the rejected French amendments. Two conditions, he urged, must be regarded as precedent to the complete abolition of war. The first is a system of mutual verification of armaments

<sup>59</sup> *Minutes* of the session of Apr. 28, 1919 (Protocol No. 5). Thirteen years later, on Feb. 19, 1932, the Japanese representative on the Council sought to establish a direct connection between this decision of 1919 and the Sino-Japanese dispute. In Mr. Sato's words to the Council: "When we came to the League, my government made an appeal for equitable treatment for our people and our trade. But we immediately encountered barriers that we have not been able to cross. We must accept the *status quo*. . . . We are subjected to treatment which is derogatory to our dignity and against which we constantly protest. On the one hand, almost all countries in the world are closed to us, and, on the other, we are driven from central and southern China and have lost our entire trade there. That being so, we must seek a solution and look near Japan—in Manchuria."



"which does not cast doubt on the good faith of anybody." This proposal, he pointed out, had received the indorsement of Mr. Elihu Root, as well as that of many other prominent individuals and organizations. And it may be mentioned in passing that the underlying principle was adopted, years later, in the Permanent Disarmament Commission projected by Articles 40 to 49 inclusive of the draft disarmament convention.

The second condition preliminary to successful elimination of war, in this French analysis, is the establishment of a permanent military commission, charged with anticipating and preparing the measures which would need to be prescribed "in cases where the Council recognizes the necessity of military operations."<sup>60</sup> In this respect the League has never gone beyond the machinery established under Article 9 of the Covenant, though there can be little doubt that the wording of this article is sufficiently elastic to permit development of the international general staff organization desired by the French in 1919, were such policy deemed desirable in itself.

The French delegation, however, agreed to accept the Covenant without its two amendments designed to implement the conditions summarized above, expressing in its acceptance the hope that they would be embodied in the Covenant by amendment at some later date.

Another issue destined to confront the League in future years was raised by Señor Bonnilla of Honduras who proposed an amendment, on which no action was taken by the Peace Conference, defining the Monroe Doctrine. Such an amendment, the delegate of Honduras urged, was rendered advisable by the specific reference to the doctrine incorporated in the Covenant at the request of President Wilson. He added, dryly, that the Monroe Doctrine has been defined in various ways by various presidents of the United States, for which reason "I

<sup>60</sup> The same.

regard as necessary that in the Covenant which is about to be concluded it should be defined with a complete clarity, in such a manner that in the future it may become part of written international law.”<sup>61</sup> Señor Bonnilla further made express reservation, in behalf of Honduras, of the right expressed in the constitution of that nation, to federate with its neighbors in a “Republic of Central America.”

A few other observations on the Covenant, of no permanent significance, were made at this plenary session of the Peace Conference. Then, towards the close of the afternoon of April 28, 1919, the proposal made by the President of the United States, for the adoption of the Covenant of the League of Nations, was put to vote and carried unanimously.

From that date until August 13, 1924, when the first duly adopted amendment came into force, no further alterations were made in the text of the Covenant. There was one curious attempt to change its wording, and thereby profoundly change the meaning of an important article. Shortly after the adjournment of the fifth plenary session of the Peace Conference on April 28 an insertion was made in paragraph 5 of Article 22 which would have permitted certain mandatory Powers to raise military levies in mandated areas for service overseas. This insertion, said to have been ordered by Clemenceau,<sup>62</sup> was not discovered until shortly before the “Conditions of Peace,” containing the Covenant, was about to be presented to the German delegation, as was done on May 7. The chicanery aroused strong opposition among both the British and American delegates, particularly on the part of President Wilson, and the offending words, which would have gone far to identify the new mandates system with pre-war colonial methods, were eliminated as quietly

<sup>61</sup> The same.

<sup>62</sup> Compare Miller, Vol. I, p. 500.

as they had been inserted. The insertion consisted of the words italicized in the following excerpt from Article 22:

Other peoples, especially those of Central Africa, are at such a stage that the mandatory must be responsible for the administration of the territory . . . subject only to . . . the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defense of *the territory and of the territory of the mother country*. . . .

On May 5, 1919 the League of Nations was formally launched, and Sir Eric Drummond as its first Secretary-General was instructed to start his official duties, through adoption of the following resolution by the organization committee, sitting at the Hotel Crillon:

1. That the Acting Secretary-General be instructed to prepare plans of organization of the League and submit them to the Committee.

2. That a credit of £100,000 shall be opened immediately on the joint and several guarantee of such of the States represented on the Committee, subject to any approval necessary by law.

2. (b) That the Acting Secretary-General or such persons as he may designate in writing shall be entitled to draw on this credit.

3. That the Acting Secretary-General be authorized to engage a temporary staff and offices and incur such other expenditures as he considers necessary for carrying out the instructions of the Committee.

4. That the Acting Secretary-General's salary shall be at the rate of £4,000 a year, with an allowance for *frais de représentation* of £6,000 a year. A house shall be provided for the Secretary-General at the permanent Seat of the League.

5. That the meeting be adjourned *sine die*, the Acting Secretary-General being instructed to call the next meeting at such time and place as he shall think most suitable, having regard to the business to be done and the convenience of the members of the Committee.

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## CHAPTER VI

### NATIONAL CONTRIBUTIONS AND POLITICAL PRINCIPLES

Step by step, at a length which may well seem wearisome in spite of the utmost condensation, the story of the formation of the League of Nations has now been given. Much of the record established by the League since 1919 is fully intelligible only with a prior understanding of the motives, the policies, and the compromises which were synthesized in framing its Constitution. With this background it is appropriate to turn to an examination of the League as it actually operates under the Covenant whose evolution we have so closely followed in these first five chapters. But before doing so it is desirable to devote a brief chapter to a summarization of national attitudes during the drafting period, and a consideration of the political principles which by unanimous agreement of the different delegations were made the basis of the League's powers and philosophy.

#### NATIONAL CONTRIBUTIONS TO THE COVENANT

The development of the Covenant from idea to reality was an intricate process, in which the contribution of individuals can never be fairly singled out from the ceaseless collaboration and conference whence the League's organic act evolved. Two men, Woodrow Wilson and Robert Cecil, were in their separate ways the chief protagonists during the drafting period and together achieved the establishment of the League by insuring that its Constitution should be incorporated in the Treaty of Peace with Germany. Their collaboration facilitated the close Anglo-American co-operation which made adoption of

the Covenant a certain and relatively simple matter. But no one who has closely studied the evolution of this document will make the mistake of calling President Wilson, Viscount Cecil, or any other individual, its author.

The dominant role played by Wilson and Cecil, however, insured that the new organization should be a real society of nations and not a mere grouping of war victors intent on the retention of their spoils. Both of these idealists looked towards far horizons and saw the League not as an instrument of punishment for the vanquished but as an agency of co-operation and mutual assistance for all nations. This was their aim. In practise, in the process of compromise through which the Covenant was written, the aim was not completely achieved. The provision whereby the League was to have been made a potent instrument for treaty revision was whittled away and special exceptions from the application of the unanimity rule were allowed in cases where the penalization of Germany by the Treaty of Versailles was called in issue. Nor was much attention paid to neutral suggestions during the drafting period. Nevertheless, and particularly when the prevalent psychology of 1919 is recalled, it remains true that the Covenant is an impartial instrument of international association. Under it, there is no reason why the Powers defeated in the World War should not play as active and influential a role as those which were nominally victorious.

In view of the fundamental importance of Anglo-American agreement in launching the League, it is instructive to give some general consideration to the respective contributions of these two countries. That of the British was unquestionably the more detailed. It was the British delegation which planned the Secretariat in substantially the form in which it exists today and suggested that the League be entrusted with a number of the

technical activities which it has handled with marked success. The establishment of the World Court and its advisory opinion function was largely due to British influence, as was the rule of annual reports to the League by mandatory Powers. Lord Robert Cecil well summed up the British policy with regard to the League when he said that the Commission "had been anxious to give the League a sphere of continuous international activity in addition to its primary duty, which was that of keeping the world's peace."

It was this primary duty to which the American delegation mainly devoted itself. President Wilson's outstanding contribution, which was to him the backbone of the Covenant, was the guarantee clause of Article 10, still the basis of the whole League machinery for peace preservation. This positive guarantee led logically to the sanctions articles of the Covenant, fulfilling the American program for a "league to enforce peace," though these drastic provisions were always as resolutely supported by the British as by the American delegation. There are, of course, numerous other American contributions in the Covenant. The influence of the United States broadened and liberalized somewhat the mandates provisions. The periodic meetings of the Assembly result from one of President Wilson's suggestions. So does the express, if somewhat vague, recognition of the principle of self-government. But the major American achievement in the drafting of the Covenant was the incorporation of the thesis that the world is now a community of nations and that hostilities between any of its members have inevitably become a concern of the whole community.

This thesis, clearly defined in the opening sentence of Article 11 of the Covenant, was laid down by House and Wilson in the first official American draft covenant, before the close of the World War. It was used to justify

the guarantee clause, which in turn led to the provisions for the enforcement of peace by collective action.

National policy not infrequently follows a spiral course, with outward manifestations which are often much clearer in the light of half-forgotten rather than immediately preceding events. As we shall see in Chapter XII, it was the United States which years after its rejection of the Covenant took steps ahead of any League member to apply something more than moral persuasion in the Sino-Japanese dispute. The American refusal to recognize any situation arising from the exercise of military pressure in that controversy was not based upon the League Covenant. But it may be asserted that except for the background of the Covenant, particularly that part of it for which the United States is mainly responsible, the State Department note of January 7, 1932 would never have been written. This note, sent on the instructions of President Hoover, was thoroughly consistent with the policy of collective action against an aggressor which President Wilson successfully sought to include in the Covenant. And President Wilson himself might well have used in February 1919 the words written by Secretary Stimson in February 1932:

... If a similar decision should be reached and a similar position taken by the other governments of the world, a *caveat* will be placed upon such action which we believe will effectively bar the legality hereafter of any title or right sought to be obtained by pressure or treaty violation. . . .

The attitude of the French government, at first indifferent if not actually in opposition to the League idea, became steadily more co-operative as the drafting of the Covenant progressed. This was largely due to the incorporation of the principle of collective guarantee and the Anglo-American willingness to back this guarantee of "territorial integrity and existing political independence" with economic, financial, and military sanctions. Under

these circumstances the League began to appear to the French as a desirable instrument of security, both for themselves and others. In consequence the major French effort during the drafting period was devoted to the development of means whereby this agency of security would be made reliable.

Two devices to this end were proposed by the French delegation and supported with great tenacity as essential to allay "anxiety" in that country regarding the League. One of these devices provided for "an international control of troops and armaments"—in other words a League general staff which would be empowered to direct national forces, subject to the approval of national governments, against an aggressor State. The second device contemplated the establishment of a League disarmament commission charged with the oversight of military appropriations in the various member States. Neither proposal would have set up a strictly international (or super-national) army, though the general staff plan seemed to be headed in that direction.

Both of these proposals broke down before resolute opposition from the American and British delegations. President Wilson, in particular, observed that the first plan savored of "international militarism" and that the second would be a step in the direction of a "super-State," a development which, in his opinion, the Commission had resolutely set aside. Nevertheless, certain concessions to the French viewpoint were made by the establishment of a permanent advisory commission, set up under Article 9, and by approval of the principle of armament reduction according to "the geographical situation and circumstances of each State." To the French the inconsistency between the Anglo-Saxon willingness to envisage sanctions and the refusal of Great Britain and the United States to provide any machinery for the opera-



tion of sanctions has continued to seem a grave weakness in the Covenant. Successive governments in Paris have consistently advocated giving the League power to enforce the authority attributed to it, on the thesis maintained by M. Larnaude at the Peace Conference that "one of the conditions necessary for the League of Nations to be able to impose peace is that the whole world knows that it has the means to impose it and to impose it at once." The major French proposal at the 1932 Conference for the Reduction and Limitation of Armaments was to put national military forces at the command of the League, thus offering "a definite choice between a league disposing of an executive authority and a league paralyzed by the intransigency of national sovereignty."

For a long time a dead issue, because of the conditions created by the abstention of the United States from League membership, the question of sanctions has again been brought to the fore by the Japanese military seizure of Manchuria. All emphasis on the theoretical desirability of the issue of sanctions against an aggressor State strengthens the French contention in favor of the creation of machinery through which sanctions could be made operative. It is also noteworthy that the French advocacy of a system of mutual verification of armaments, strongly indorsed in 1919 by Mr. Elihu Root, was incorporated in the draft disarmament convention prepared for the action of the Conference of 1932. Article 40 of this draft convention provided that "There shall be set up at the Seat of the League of Nations a permanent disarmament commission with the duty of following the execution of the present convention." Succeeding articles detailed the tentative composition and functioning of this permanent commission with Article 49 stating, in part, that "each year the commission shall make at least one report on the information submitted to

it . . . showing the situation as regards the fulfilment of the present convention."<sup>1</sup>

Neither Italy nor Japan, the other two Powers possessing two representatives each on the Commission which framed the Covenant, played a prominent role in its development, and the same must be said of the representatives of the lesser Powers and the neutral States. In the latter case, however, this was not due to lack of suggestions but to the consultative rather than initiatory function to which they were confined. On the other hand, few of the fourteen belligerent nations, represented on the Peace Conference Commission, or of the thirteen neutral countries consulted by it, failed to make some contribution to the Covenant in its formative period.

The chief Italian contribution is to be found in the harmonizing and very co-operative influence exercised by Signor Orlando. The character given by the Covenant to the central organs of the League will be examined in the chapters devoted to Secretariat, Council, and Assembly, and need not be summarized here. But it was in large part the influence of Signor Orlando which checked attempts to give these organs a constitutional definition which in practise would probably have proved too-precise and rigid. In his own words, "the League itself will have to make many regulations to fill up the gaps."

The outstanding motion from these less active States to be rejected by the Commission was the Japanese request for some recognition in the Covenant of the principle of racial equality, later modified to a plea for "the endorsement of the principle of equality of nations and the just treatment of their nationals." The denial of this Japanese proposal, Baron Makino predicted, would prove "most detrimental to that harmony and co-operation, upon

<sup>1</sup> See "Report of the Preparatory Commission for the Disarmament Conference and Draft Convention," *U. S. Department of State Conference Series No. 7*, pp. 46-50 and 97-99.

which foundation alone can the League now contemplated be securely built."

While official demands from both the French and Japanese governments were rejected by the Commission—without resulting in refusal by these nations to join the League—it is noteworthy that virtually all the important revisions insisted upon by spokesmen of the Republican position in the United States were incorporated into the Covenant. This was the case with (1) the reservation specifying that each League member should retain exclusive control over subjects which by international law are solely within its domestic jurisdiction;<sup>2</sup> (2) the reservation protecting such validity as is possessed by the Monroe Doctrine; (3) the stipulation of the right of withdrawal from the League; (4) the clarification of Article 15 in the interest of the preservation of national sovereignty; (5) the specification that limitation of armaments must be adopted "by the several governments" in order to be effective; and (6) the definite assurance that no nation can be called upon to accept the duties of a mandatory Power against the will of its government.

The only suggestions from responsible American sources which were not embodied in the Covenant pertained to the modification of Article 10; the inauguration of compulsory arbitration for all disputes "of a justiciable character"; and the establishment of an international supervision for national armaments. The last two of these proposals, put forward by Mr. Elihu Root, were certainly in advance of American public opinion in 1919, and, if adopted, would probably have raised more hostility than support in the United States. It should be noted

<sup>2</sup> Prior to the General Treaty of Inter-American Arbitration, arbitration treaties contracted by the United States frequently reserved to that country unquestioned jurisdiction over all subjects interpreted by it as domestic in character. This treaty of compulsory arbitration, approved by the Senate on Jan. 19, 1932, adopted the League formula by adding the words "not controlled by international law" to the exception of domestic questions.

that the change in Article 15, made to meet American objections in 1919, was in part responsible for an eventual constitutional deficiency of which Japan took full advantage in 1931-32.

#### POLITICAL PRINCIPLES IN THE COVENANT

Of the political principles directly specified or unmistakably implied in the League Covenant, the most important was the preservation of what was held to be complete national sovereignty. The League was created as a free association, as a society of nations, as a loose confederacy, but the idea of a super-State was repudiated in principle, though not always in detail. During the drafting period, President Wilson predicted that "the time will come when men will be just as eager partisans of the sovereignty of mankind as they are now of their own national sovereignty." There was, however, little attempt to act on the assumption that this golden age was in sight in 1919 and the factor behind the elimination of many suggested League functions was the fear that these would encroach too rudely on the dogma of national sovereignty.

Thus, the effort to establish compulsory arbitration of international disputes, though strongly defended by the representatives of several nations, particularly the lesser Powers, was ruled out on British and American insistence. The same fate attended the move to abolish compulsory military service, though the line-up on this issue reversed that on compulsory arbitration. President Wilson's attempt to secure prohibition of the private manufacture of "munitions and the implements of war" was also defeated in substance, and his move to abolish retaliatory and discriminatory economic policies on the part of League members found place in the Covenant only in severely circumscribed and attenuated form. What was left of the principle, in Article 23 (e), did little to check

the progressive strangulation of international trade brought about by nationalistic economic policies after the war.

As a corollary to the safeguarding of national sovereignty, the Covenant established the unanimity rule for decisions of both Assembly and Council. As mentioned above, however, certain exceptions to this rule were specified and during the drafting of the Covenant Geneva was selected as the Seat of the League by a small majority vote of the Commission. In the League's actual operation the unanimity rule has been subject to frequent minor derogations, thereby to some extent limiting the presumable unqualified sovereignty of member States. Where the unanimity rule clashes with the accomplishment of routine business the tendency, when the interests of the Great Powers are not affected, is to disregard or evade it.

Under the Covenant the League is made custodian of a number of entirely new functions in international administration. Of these, that which creates the most pronounced break with pre-war tradition is the program for reduction of national armaments. The explicit responsibility of the Council for the formulation and supervision of an international disarmament policy is the outgrowth of proposals sponsored by President Wilson. It has led directly to the concentration of all official disarmament activity under League auspices, and to the summoning of the World Disarmament Conference at the League Secretariat in 1932. Other novel administrative work entrusted to League control includes the supervision of territories under mandate, and activities arising from the guarantee that the provisions of the post-war minorities treaties will be observed.<sup>3</sup> As in the case of

<sup>3</sup> The various minority treaties place their provisions under the guarantee of the League of Nations in the following language: "[Name of State] agrees that the stipulations in the foregoing articles, so far as they affect persons belonging to racial, religious, or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. . . ."

disarmament, a permanent League commission to oversee the working of the mandates system was established. In recent years creation of a permanent minorities commission as a League organ has been urged with increasing vigor. This development, however, has so far been rejected and was not contemplated by the Covenant as approved in 1919. By other articles of the Treaty of Versailles, moreover, the League was given broadly inclusive governmental authority for the Saar Territory, and has come to exercise some control over designated aspects of the government of Danzig.

In spite of the fact that the doctrine of coercive sanctions was unquestioningly accepted during the drafting period, no provision for the determination of what constitutes aggression was placed in the Covenant. This deficiency, which would have been made good had the Geneva Protocol been adopted five years later, remains one of the two outstanding obstacles to the utilization of sanctions by the League. The other impediment is the abstention of the United States from League membership, not anticipated when the provisions for sanctions were drawn up. This second obstacle would be partially, but only partially, removed should the government of the United States give reliable pledges never to oppose the exercise of sanctions agreed upon by the League's Council. Positive rather than negative American assistance in a policy of coercion against an aggressor—for the automatic determination of whom there is at present no arrangement—would be essential to give that policy the assurance of success without which it cannot safely be attempted. Under the circumstances, therefore, the sections of the Covenant which make sanctions applicable not only to League members but also to non-member States, and even for the enforcement of an arbitral award or World Court judgment, are at present of purely academic interest. Had the theory of sanctions become the

influential force anticipated, exclusion from the Covenant of the doctrine of freedom of the seas would not have given the justification which can be found for post-war naval rivalries. With the theory of sanctions temporarily a dead letter the issue of neutrality rights, and their protection, again came to the fore.

The provisions of the Covenant with respect to treaties are carefully integrated and represent an important advance in the field of international law. Under Articles 18 to 20 inclusive, all treaties between regular members must be registered and published if they are to have binding force. They must not be inconsistent with the terms of the Covenant and when regarded by the Assembly as no longer applicable their reconsideration may be advised by that body. This provision is only a weak reflection of power of treaty revision at first suggested for the League. Yet the three treaty articles together constitute a radical change from the pre-war system which permitted inter-governmental contracts of the most far-reaching character to be concluded and maintained without knowledge of or recourse by other members of the world community, no matter how deeply these others were affected thereby.

The effort of the majority of the framers of the Covenant was to end for all time the world system of alliance and counter-alliance between rival groups of nations. An exception perhaps derogatory to this principle was permitted when approval was extended to the establishment of special conventions intended to diminish the risks of war. While this policy has on the one hand led to constructive regional agreements such as the Locarno Treaties, it has on the other hand facilitated post-war groupings primarily designed to keep the defeated nations in subjection and scarcely distinguishable in motive from the most mischievous of the pre-war alliances.

Although great care was taken to insure that the Covenant should preserve the sovereign rights of League mem-

bers, it affords ample evidence that an organization going far beyond any previous form of international association was established by the Peace Conference. The most interesting of the provisions creating this result was that which established diplomatic privileges and immunities for "representatives of the members of the League and officials of the League when engaged on the business of the League," and that which established inviolability for "the buildings and other property occupied by the League or its officials or by representatives attending its meetings." These provisions (paragraphs 4 and 5 of Article 7) aroused no debate in the Commission and have therefore been passed over with little comment in the preceding analysis.

They are, nevertheless, of vital importance in defining the character of the League as a form, however embryonic, of super-national government. Illustration of this character was given when the position of Swiss officials of the League was first called into question. International law showed no precedent for the granting of diplomatic privileges and immunities by a government to its subjects in the employ of an organization outside of its jurisdiction. After discussion extending over several years questions arising from this far-reaching innovation were settled by the conclusion in 1926 of a *modus vivendi* between the Swiss government on the one hand and the Secretary-General of the League and the Director of the International Labor Office on the other.<sup>4</sup> By Articles 9 and 11 of this *arrangement*, which regulated the whole problem of privileges, immunities, and inviolability, the Swiss government admitted freedom from local jurisdiction for the acts of Swiss nationals carried out in the capacity of League officials. Similarly, their salaries from the League were granted exemption from direct local

<sup>4</sup> For text of this *modus vivendi* see *Official Journal*, October 1926, pages 1422-24.



taxation, and freedom from service in the Swiss army was granted in cases where fulfillment of this obligation "would be likely seriously to interfere with the normal working of the services of the League." The Swiss government, in other words, recognized that its claim to authority over, and services from, its own nationals should, in certain specified cases, yield to a superior claim on the part of the League of Nations.

In like manner, the inviolability of League buildings, or of other property permanently or temporarily occupied by representatives of the League, has introduced a new and far-reaching principle into international law. In the past the inviolability of diplomatic quarters has followed from the doctrine of the inviolability of the diplomatic person. In the case of the League buildings the principle is founded directly on the utilization of such buildings or property for League purposes and is thus a recognition of a sovereign quality resident in the League.<sup>5</sup> It was no idle prediction from the committee which drafted the Covenant when, on the selection of Geneva as the Seat of the League, the suggestion was made that "in course of time a new international world capitol may arise."

In 1820, Thomas Jefferson, sometimes regarded as the apostle of the isolationist attitude in the United States, was rounding out a long life in his home at "Monticello," near Charlottesville, Virginia. Towards the end of that year, exactly a century before the League was established on the shores of Lac Lemman, he wrote a letter to his friend Marc Pictet of Geneva, saying: "Altho' your Geneva is but a point, as it were, on the globe, yet it has made itself the most interesting one, perhaps, on that globe."

In this respect a century has not changed the validity of Jefferson's opinions.

<sup>5</sup> Compare Jean Ray, *Commentaire du Pacte de la Société des Nations*, (Paris 1930), p. 292.



■

PART II

THE LEAGUE IN BEING

■



## CHAPTER VII

### THE TECHNICAL COMMITTEES

The Covenant of the League of Nations, as adopted by the Paris Peace Conference on April 28, 1919, was in large measure based upon the assumption of membership by the United States. Preliminary organization of the Secretariat, begun by Sir Eric Drummond when the first credit was placed at his disposal on May 5,<sup>1</sup> similarly anticipated full American participation, and several American citizens were in consequence immediately appointed to the headquarters of the provisional Secretariat established in London.

Then, gradually, it began to be apparent that the United States Senate would not ratify the Treaty of Versailles; that the United States would not become a member of the League, would therefore make no official contribution to League financing, and would take no interest in its struggle for establishment in the chaotic post-war world. Indeed, as time passed, it became only too apparent that the dominant American feeling towards the League was not merely one of indifference, but even of acute hostility. The idealism of Woodrow Wilson was being replaced by the cynicism of Warren Gamaliel Harding who, in a presidential campaign speech given at Des Moines on October 7, 1920, remarked:

Our opponents are persistently curious to know whether, if—or, perhaps I might better say, when—I am elected, I intend to “scrap” the League. It might be sufficient in reply to suggest the futility of “scrapping” something which is already “scrapped.” Whether President Wilson is to be blamed or thanked for the result the fact remains that the Paris League has been “scrapped” by the hand of its chief architect.

<sup>1</sup> See above, p. 209.

The League was not "scrapped" by the abstention of the United States but its strength was heavily taxed in launching, without the help of the strongest world Power, an organization whose organic act had been written in full expectation of charter membership by that Power. Inevitably a different League came into being from that for which the Covenant had been drafted. Theoretically it might well have been better to remodel the Covenant in agreement with the new condition. But the Treaty of Versailles had been in effect for over two months before the Senate finally rejected it, by seven votes less than the necessary two-thirds majority, on March 19, 1920.<sup>2</sup> Even if revision had been possible overwhelming difficulties would have been involved in summoning another international conference to draft a more realistic covenant.

In the expectation, therefore, that some day the United States would decide to occupy the Council and Assembly seats reserved for it, the League got under way. "Half a League Onward" was the courageous witticism of the period. And if it is true that Geneva has on several occasions completely failed to fulfill expectations which the wording of the Covenant justified, it is still only the most rudimentary justice to remember that this Covenant was designed for one League while another was called upon to live up to its provisions.

That this initial crisis could be surmounted was due not merely to the calculated flexibility of the League's Constitution, but also to the existence of a theory of international administration which had been operating with great success during the latter part of the war, and to the availability of a body of allied administrators able and

<sup>2</sup> An excellent summary of the Senate's handling of the League Covenant is given by Charles P. Howland (editor) in *Survey of American Foreign Relations*, 1928, Chap. VI. A complete and detailed account has been provided by Denna Frank Fleming, *The United States and the League of Nations, 1918-1920*.

willing to adapt this theory to League purposes. Whatever the virtues in the brand-new Covenant, they had no practical value until the agreement for international association could be put into operation. To accomplish this entailed the existence of an applicable theory which, fortunately, was at hand. There have been many condemnations of the evil heritage which the war left for the League of Nations to work off. In large measure such criticism is legitimate. On the other hand, inadequate attention has been paid to the working knowledge of the technique of international administration which war experience gave the League. Without those war-time lessons, learned unwillingly and paid for by tens of thousands of wasted human lives, the League's first decade might easily have been spent in a fumbling, futile quest for that theory of operation which was presented to it at the outset.

#### INTERNATIONAL ADMINISTRATION BEFORE THE WAR

Before the war, so far as it had been developed at all, official international administration was confined to problems of a special and limited type, where co-operation was easy to secure and where it had to be secured in order to satisfy the most elemental conditions of international intercourse. The classic instance of this early governmental co-operation, carried out in such form as definitely to limit the sovereign powers of the participating nations, is the Universal Postal Union. It has so completely transformed conditions in the field of its activity that to look back to the situation before 1874, when the Union was founded, is almost like reading a chapter of history from the feudal period. Prior to the establishment of the Universal Postal Union: "A letter from the United States to Australia would pay either five, thirty-three, forty-five, or sixty cents, or \$1.02 per half ounce,

according to the route by which it was sent.”<sup>3</sup> In consequence, each unit of overseas mail had to follow the itinerary for which prepayment had been made, even though on some schedules the missing of a steamer might mean a delay of several weeks for a letter so routed. There is no need to emphasize the enormous benefits brought to every class of society in every country by the substitution of the present system for this archaic and anarchic disorder.

While the development of international regulation in the postal field came slowly, and was secured over the opposition of certain groups and governments which faced a temporary financial loss thereby, the evident need of change resulted in somewhat arbitrary procedure. The governing body of the Universal Postal Union is an international congress in which each State represented has one vote.<sup>4</sup> Its decisions are taken not by unanimity but by a simple majority, and while theoretically subject to ratification by the participating Powers are, in practise, final. So great are the advantages of membership in the Union that not even the most powerful member could risk the withdrawal of privileges which would result from resignation. “The administrations adhering to the Union,” in the words of Leonard S. Woolf, “never wait for formal ratification before putting the new regulations into operation, and the decisions of a Postal Congress are acted upon whether they are ratified or not.”<sup>5</sup>

The Universal Postal Union has obvious significance as a far-reaching experiment in the field of international administration. This significance does not lie in any

<sup>3</sup> Paul Reinsch, *Public International Unions*, p. 21. As early as 1862, Postmaster-General Blair of the United States formally advocated “an international postal arrangement established on a common basis.” See *L’Union Postale Universelle*, International Bureau (Berne), 1924, p. 9.

<sup>4</sup> But the dominions, colonies, and dependencies of the Great Powers have separate representation at the congress, providing a precedent for the independent status given the British dominions in the League organization.

<sup>5</sup> *International Government*, p. 195.



parallelism with the League program, for the Union works within relatively narrow limits, under well-defined rules which specify purpose much more closely than, for instance, does Article 23 of the Covenant. The common-sense nature of the Postal Union, however, has resulted in a voluntary surrender of "State's Rights" which early indicated that striking developments in this direction might logically be expected in an organized society of nations. If the Universal Postal Union can alter—as it has altered—the postal regulations of a Great Power over its protest and against its vote, why should the League Council and Assembly always find it necessary to act in accordance with the unanimity rule, as provided (barring certain exceptions) in Article 5(1) of the Covenant? And since every national postman, when he delivers a letter from a foreign country, is at that moment serving a thoroughly international authority, a precedent has been established which perhaps renders less revolutionary the anticipation that national forces may some time be called upon to serve an international police authority.

Even greater power over the States which created it was given to the International Sugar Commission, established by an international convention of 1902 and in its field a real international force prior to the World War. In order to check artificial stimulus to sugar production this Commission was authorized to instruct signatories of the convention to apply special tariffs on sugar against any signatory which persisted in granting bounties to producers of this commodity. For signatories of this convention, including most of the important European nations, the sovereign right of tariff legislation in respect to sugar was voluntarily subordinated to an international control.

#### WAR-TIME INTERNATIONAL EXECUTIVE CO-ORDINATION

Until the war the Universal Postal Union, although little power was accorded to its permanent bureau, and

the International Sugar Commission stood out among other forms of international co-operation by reason of the degree of their influence over the participating national governments.<sup>6</sup> But under the strain of the struggle against Germany there was developed among the Allied Powers a system of international executive co-ordination far more flexible and far-reaching than that of any of the pre-war international unions.

The problem aroused by the growing necessity for pooled resources was that of directing and controlling the activities of the various Allied governments without displacing their separate authorities. And the system, *based on existing national authorities*, which was developed to solve that problem is, in fundamentals, the same as that upon which the League of Nations has been working since its inception.

That the technique found essential to the urgent needs of war could so readily be carried over to the less dramatic work of pacific co-operation was largely due to the immediate transfer to League service of a little group of experienced inter-Allied officials. The same principles which Sir Arthur Salter practised during the war as chairman of the Allied Maritime Transport Executive, he successfully applied as director of the League's Economic and Financial Section. Nor was it accidental that two of Salter's three associates on the Executive of the Allied Maritime Transport Council, Jean Monnet (France) and Bernardo Attolico (Italy), were also taken over by the League at the outset, the first-named as deputy secretary-general, the second to organize its work in making provision "to secure and maintain freedom of communications and of transit," as Article 23 (e) of the Covenant

<sup>6</sup> Another pre-war international organ with definite powers of control over the States which created it was the International Rhine Commission, which dates back to a Napoleonic treaty of 1804. See Francis B. Sayre, *Experiments in International Administration*, Chap. V. Also Norman L. Hill, *International Administration*, pp. 33-46.

lays down the obligation. An American delegate to the Allied Maritime Transport Council, George Rublee, would also, in all probability, have held high executive office in the Secretariat if the United States had not refused League membership.

Sir Arthur Salter has himself developed this theory of international administration in Part V of his book on *Allied Shipping Control*, which tells the story, and brings out the underlying principle, of the immense effort necessary to provide an adequate Allied service of supply during the German submarine offensive. He there points out that the various councils entrusted with the development of inter-Allied co-operation in specific fields were composed of ministers and officials "responsible, in their several countries, for the executive action required." Thus, distinction between the advisory and the executive was, in effect, destroyed:

Each minister would, in his national capacity, issue the executive orders required to give effect to the recommendation to which he had assented, in his international capacity, as a member of the Council.<sup>7</sup>

Or, in the words of an American delegate:

It was the duty of the members to report the recommendations of the Council to their respective governments, and to secure, if possible, that the governments made the decisions and took the action requisite to give effect to these recommendations.<sup>8</sup>

#### CONTINUOUS INTERNATIONAL EXECUTIVE ACTION

Although a council of this nature possessed full authority to make the decisions necessary to a common international policy, it possessed neither the technical knowledge nor the administrative machinery demanded in the frequent cases where an intricate problem requires almost

<sup>7</sup> Sir Arthur Salter, *Allied Shipping Control*, p. 249.

<sup>8</sup> George Rublee, "Inter-Allied Machinery in War-Time," *The League of Nations Starts*, p. 37.

continuous co-operative executive action. It was a great advance over the old system of exclusive foreign-office relationships that the ministers of the main departments in the principal Allied governments should be acting co-operatively at half a dozen different points of contact. These ministers, however, were after all political appointees, selected for their potential ability to drive through broad lines of policy, but in complete reliance on the technicians for the measures necessary to carry general policy into detailed effect. The Ministers of Munitions of three or more Allied Powers might easily agree together that so many thousands of shells of a certain calibre should be available at a given spot on a given date. They might even decide offhand what proportion of the total each of the co-operating nations should supply. But such vital subsequent details as the allocation of shipping to carry these shells, and the temporary diminution of other war supplies in order to find cargo space for an emergency order of munitions, were matters requiring a meticulous unity of treatment beyond the powers of the co-operating department chiefs.

The war-time solution found for this problem of secondary co-operation was the creation of international committees of departmental officials, possessing both expert knowledge and executive influence in their limited fields. Ultimately, twenty of these Allied Program Committees were established, all of them linked together by "a non-national secretariat, whose function was to serve the organization as a whole and to co-ordinate the work of all its parts."<sup>9</sup> Over this was the permanent Executive of the Allied Maritime Transport Council, stationed in London. The Council itself was convened for the first time on March 11, 1918 and held in all four meetings in the eight months prior to the Armistice.

<sup>9</sup> Rublee, p. 38.

Compared with the merely occasional contacts of responsible ministers, the system thus developed represented pronounced improvement in the technique of international co-operation. Co-operation was now operative at every point where a control had been established and, furthermore, it was both continuous and essentially practical co-operation. As their name indicates, the Allied Program Committees were concerned with the careful formulation of international policy before the various phases of this policy were presented for execution. The representation of responsible departmental officials on these committees went far to insure that no activity for which there was not reasonable chance of ultimate success would be embarked upon at all.

#### THE PRINCIPLE OF VOLUNTARY CO-OPERATION

In sharp contrast with, for instance, the organization set up by the International Sugar Convention of 1902,<sup>10</sup> the war-time system thus established was not based on delegated authority, and indeed was not actually an organization external to those of the co-operating Allied governments. For certain ends, and with the primary purpose of reducing the friction which would have been caused by the dominance of any single Power, the national administrations were converted into instruments of international action. The underlying principle was thus diametrically opposite to the idea of a single centralized command. The theories in contrast were those of a voluntary League as opposed to an overbearing super-State. Although this system of voluntarily co-ordinated activity was not developed until relatively late in the war, it had amply demonstrated its efficiency before the Armistice.

The Covenant of the League is largely concerned with the provision of machinery either to settle international

<sup>10</sup> The text of this convention may be consulted in *Hertslet's Commercial Treaties*, Vol. III, pp. 579 ff.

disputes after they have arisen, or to remove the causes of such disputes before they become serious. But it also gives a good deal of actual or implied attention to the general subject of international administrative co-operation, on the rational assumption that the development of such co-operation provides the firmest foundation of world peace. Wherever this general co-operation is demanded, as throughout Article 23 of the Covenant, it has been put into effect along the lines of the theories of international administration worked out by the Allied governments during the war and briefly described above. Adherence to these principles has not merely encouraged widespread participation in the technical work of the League. It has also insured that as long as these principles are followed the League cannot assert itself as the "super-State" which so many of its critics have confusedly feared. The League as founded is firmly based on existing national authorities. It is, in the words of Sir Arthur Salter, "not a center of controlling power but an instrument to co-ordinate activity which is world wide in its influence and effects."<sup>11</sup> It may, of course, with the development of the process of confederation between the nations, in time assume more and more attributes of super-national government. But such a trend will come from a delegation and not a usurpation of powers. It will not represent a forcible encroachment on the sovereignty of the member States.

The League's theory of international administrative co-operation is not in conflict with the doctrine of national sovereignty, even when, as is customary, that doctrine is interpreted as meaning something incompatible with the intricate interrelations of modern civilization. None the less it may be said that the principle of direct contact between specialists with executive author-

<sup>11</sup> *Allied Shipping Control*, p. 279. Compare also Rublee, pp. 29-30.

ity in their home governments has already done something to modify traditional national ideas of sovereignty.

This can be clearly seen in the case of two great countries which were not League members at the outset—the United States and Germany. The United States has grown closer to the League in just such measure as its public opinion has come to realize that participation in the work of committees and conferences at Geneva provides the basis for rather than a control of policy in matters of international concern. Germany has become at least reconciled to League membership as her more nationalistic spokesmen have come to realize that membership does not mean subordination to a super-State controlled by her former enemies. In other words, the League idea has gained ground in America by letting those who most vehemently propounded the idea of isolation themselves admit that isolation is impossible. And it has gained ground in Germany by letting those moderns who were most devoted to the doctrine of Cæsarism<sup>12</sup> themselves share in the development of a system which is both carefully formed and flexible.<sup>13</sup>

There was thus a well-defined theory of operation, which needed only to be transformed into concrete

<sup>12</sup> Compare Oswald Spengler, *The Decline of the West* (translated by Charles F. Atkinson), Vol. II, p. 540; "By the term 'Cæsarism' I mean that kind of government which, irrespective of any constitutional formulation that it may have, is in its inward self a return to thorough formlessness. . . . Real importance centered in the wholly personal power exercised by the Cæsar, or by anybody else capable of exercising it in his place."

<sup>13</sup> On May 9, 1919, the German delegation to the Peace Conference presented an elaborate and meticulous draft covenant as an alternative to the present League Covenant, which was by that time adopted. Whatever the German feeling in 1919, it is strongly to be doubted that any important section of opinion in that country would today prefer the rigid definition of the sixty-six articles of this German draft to the much simpler and more flexible Constitution now in operation. Yet this German draft, based on a thoroughgoing super-State philosophy, was perhaps more in accord with Prussian political traditions than is the Covenant to which Germany now adheres. The German text and the English translation of this draft form Document 35 in David Hunter Miller, *The Drafting of the Covenant*, Vol. II.

organization within the four walls of the Covenant, when the nucleus of the Secretariat began work in London a week after the adoption of the League's Constitution by the Peace Conference. The extent to which that theory of operation had been thought out in advance is perhaps not generally realized, nor will it be until all the confidential Secretariat memoranda of the period have been made public. From one of these, a lengthy "note on organization" which the present writer has been privileged to examine, a brief quotation illustrating the certainty with which the Secretariat began its work, may properly be given. The significance of this anticipation of actual development lies in the fact that it was circulated in the embryonic Secretariat on May 10, 1919, just twelve days after the adoption of the Covenant and exactly eight months before the League came officially into existence, with the entry into force of the Treaty of Versailles. This memorandum asserted:

If the League is to become gradually an important part of the government of the world, it will not be sufficient to rely on the meeting of the Assembly and the Executive Council. It will be necessary to have a very elastic machinery for effecting *direct contact between the main national governments of the world under the general auspices of the League*. The relevant ministers of the several cabinets will have to be encouraged to meet frequently on bodies such as the Transport Council, Supreme Economic Council, etc., and discuss their national policies so far as they are international in this effect in direct contact with each other. . . . Beyond these arrangements for occasional meetings of the Allied ministers, there should be some form of permanent association and co-operation of officials who would, as in the case of the Transport Executive, endeavour so to adjust the development of national policy within their respective spheres as to facilitate agreement on policy when the ministers actually met.<sup>14</sup>

<sup>14</sup> Italics in the original.



## ESTABLISHMENT OF TECHNICAL ORGANIZATIONS

On this theory, and well in advance of the convening of either Council or Assembly, the Secretariat proceeded to map out the composition and establishment of the auxiliary organisms of the League. The first three to be planned were the so-called "Technical Organizations"—(1) The Economic and Financial Organization; (2) The Communications and Transit Organization; and (3) The Health Organization.

It was soon realized that variation from a single rule would be necessary in the establishment of committees functioning under these Organizations. For instance the Economic and Financial Committees, sponsored by the first-named Organization, are composed of persons of expert qualifications appointed by the Council in an individual capacity. The members of these Committees are not officially governmental representatives. The members of the Committee for Communications and Transit, on the other hand, are definitively governmental representatives. Here one member is appointed by the government of each State possessing a permanent seat on the Council; the other members, appointed by a dozen other governments, are given this privilege on a basis of "technical interests and geographic representation."<sup>15</sup> A third set of characteristics enters into the composition of the Health Organization. Of the membership of its main committee ten are nominated by the committee of the *Office International d'Hygiène Publique* and six are appointed by the Council, which also reserves the right to appoint assessors who rank as members.

With organizations of such varying characteristics a clear-cut definition of the League's power of control became essential. This was provided by an important

<sup>15</sup> *Collected Texts and Documents Relating to the Constitutional Powers and Procedure of the Organization for Communications and Transit*, League Document C. C. T. 79(2).

resolution adopted by the Council on May 19, 1920, at its fifth session, and approved, with the addition of a paragraph strengthening the Council's supreme authority, by the first session of the Assembly on December 8, 1920. This resolution, with the addition by the Assembly italicized, was as follows:

The Technical Organizations of the League now in process of formation are established for the purpose of facilitating the task of the Assembly and the Council by the setting up of technical sections on the one hand, and on the other to assist members of the League, by establishing direct contact between their technical representatives in the various spheres, to fulfil their international duties.

With this double object, they must keep enough independence and flexibility to make them effectively useful for the members of the League, and yet they must remain under the control of the responsible organizations which conduct the general business of the League, with a view to verifying whether the proposals are in conformity with the principles and spirit of the Covenant in accordance with Articles 19 and 20.

The two following principles will serve as a guide:

(a) The interior working of the various organizations should be independent.

They will prepare their own agenda and communicate it to the Council of the League before discussion thereon takes place.

*In exceptional cases in which it is necessary to add to the agenda during the progress of a Conference of a Technical Organization, and time does not admit of the communication of the additional item to the Council, any decision arrived at thereon shall be provisional only until the Council has had an opportunity of exercising its control.*

(b) Their relations with the members of the League should be under control.

Before any communication of the results or proposals of the Technical Organizations is made to the members, and before any action concerning a member is taken, the Council of the League must be immediately informed, in order that they may exercise their power of control, if necessary. In this case, the Council may decide that the communication or action in ques-

tion shall be postponed and request the Technical Organization concerned either to withdraw the question from its agenda or to submit it to further consideration.

The Technical Organization may, however, request that the decision taken by the Council shall be discussed at the next meeting of the Assembly.

The Assembly of the League should be informed of all questions dealt with in the interval between its meetings by the Council in the exercise of its power of control defined above. It may either be informed of such questions by the Council on its own initiative or on the proposal of any one of its members, or at the request of one of the Technical Organizations of the League.<sup>16</sup>

The plans for the three Technical Organizations of the League were in each case thoroughly discussed, and to some extent revised, as part of the work of the series of reconstruction conferences held during 1920-21. Thus the Economic and Financial Organization was formally established on the recommendation of the Brussels Financial Conference (October 1920) and the Advisory Economic and Financial Committee, to "replace the Provisional Technical Economic and Financial Committee appointed by the Council," was constituted by resolution of the First Assembly on December 9, 1920.<sup>17</sup> On the same day the Assembly invited the General Transit Conference, which met at Barcelona in March 1921—

. . . to organize an Advisory and Technical Committee, the headquarters of which shall be at Geneva. This Committee shall be a consultative and technical body, to consider and propose measures calculated to insure freedom of communication and transit at all times, and to assist the Council and Assembly of the League in discharging the functions entrusted to the League by Article 24 of the Covenant, and by Articles 342, 377 and 378 of the Treaty of Versailles, and the corresponding articles in the other treaties.<sup>18</sup>

<sup>16</sup> See *Procès Verbal*, fifth Council session, p. 187, and *Official Journal*, S. S., January 1921, pp. 12-13.

<sup>17</sup> The same, p. 13.

<sup>18</sup> The same, pp. 14-15.

Finally, the Health Organization, the draft constitution of which had been drawn up at the International Health Conference in London (April 1920) was definitely constituted by a detailed Assembly resolution of December 10, 1920.<sup>19</sup> In all three cases, it should be emphasized, Assembly approval, whether retroactive or prospective, was regarded as necessary for the establishment of the organizations.

#### OTHER AUXILIARY ORGANIZATIONS

After the Technical Organizations, according to the official classifications, come the Permanent Advisory Commissions of the League. With the passage of time the distinction between the two groups is becoming somewhat arbitrary. The Permanent Advisory Commissions which have been established in the fields of disarmament, of mandates, of intellectual co-operation, of the protection of children and young people, and of the illicit traffic in narcotic drugs, are not less "technical" than those established under the so-called Technical Organizations. Neither are they differentiated in the frequency of their sessions nor fundamentally in the method of their appointment, which is by the Council in every case except that of the Advisory Commission for the Protection of Children and Young People, whose members are named by governments invited by the Council to designate their representatives. Chronologically, the Permanent Advisory Commissions were set up after, though almost immediately after, the Technical Organizations. Historically, the chief difference would seem to be that the Technical Organizations were established with the assistance of international conferences not necessarily confined to League members, while the Permanent Advisory Commissions were launched by the Council on the authority of various articles of the Covenant alone. But even here the

<sup>19</sup> The same, pp. 15-19.

distinction is subject to question, since the Economic and Financial and the Transit and Communications Organizations both root in Article 23(e) of the Covenant, as does the Health Organization in Article 24(f). There is, however, the constitutional distinction that the periodical conferences of the Technical Organizations, when held, are able, subject to the Assembly resolution quoted on pages 240-41, to provide for the strictly "technical commissions" an extra-League source of authority which the "advisory commissions" do not possess. In general, the latter have less policy-making power.

Next in order to the Permanent Advisory Commissions come the temporary advisory commissions, established by the Council, usually on the request of the Assembly, to execute certain definite tasks of a more or less transitory nature. Typical of these were the Preparatory Commission for the Disarmament Conference, and the Committee of Experts for the Progressive Codification of International Law. These temporary advisory commissions are not to be confused with the temporary committees which, in addition to permanent committees, are formed under the Technical Organizations. These adjuncts of the Technical Organizations are sub-committees, in the first instance responsible to the parent body alone, while the temporary advisory commissions are directly responsible to the Council and Assembly of the League.

#### ADMINISTRATIVE AGENCIES

In addition to the work of the Technical Organizations and Advisory Commissions the League possesses certain definitely administrative or quasi-administrative functions involving subordination of national sovereignty to League agencies, acting under the supervision or oversight of the Council. These administrative agencies were either created by the League as the result of provisions in the peace treaties, or have been established more recently

to handle specific humanitarian or financial undertakings approved by the Assembly and Council.

The outstanding example of a direct type of international administration handled by the League is the government of the Saar Territory, which under the Treaty of Versailles was surrendered by Germany to the trusteeship of the League for a period of fifteen years.<sup>20</sup> As a result of these treaty provisions a district with an area of 1,888 square kilometers and a population, in 1931, of approximately eight hundred thousand is governed by a ministerial commission of five members appointed by the Council of the League. The treaty stipulates that this commission include a French citizen by birth, a native resident of the Saar who is not a French citizen, and three others who are nationals neither of France nor Germany. But the responsibility of all the members, who are appointed for one year and eligible for reappointment, is to the League alone. The present (1932) chairman is Mr. Knox (British), his predecessors in this office having been Sir Ernest Wilton (British), Mr. George W. Stephens (Canadian) and M. Rault (French).

The Commission possesses within the Territory all the powers of government that formerly belonged to the German Empire. It operates under instructions which were drawn up by the Council on February 13, 1920 to supplement the provisions of the Treaty of Versailles, and submits voluminous quarterly reports which are circulated to all members of the League and printed in the *Official Journal*.<sup>21</sup> It may be noted that the sovereignty over the Saar Territory relinquished by Germany to the League in 1920 was partially regained by the Reich when

<sup>20</sup> Articles 45-50 and Special Annex.

<sup>21</sup> These reports should be consulted. For a full account of the administration of the Saar Territory see also *Ten Years of World Co-operation*, League of Nations; F. M. Russell, *The International Government of the Saar*; Jean Prion, *Le Territoire de la Saar*; and Hill, *International Administration*.

Germany became a League member in 1926. Something of the same result was also effected for the former German colonies when that country joined the League.

The administrative functions of the League with reference to the Free City of Danzig, having an area of 1,900 square kilometers and a population, in 1931, of about four hundred thousand, are less direct. Whereas the Saar Territory is governed by a commission directly responsible to the League, Danzig, by Articles 100 to 108 of the Treaty of Versailles, possesses self-government but is placed under the protection of the League, which guarantees its constitution. "This collective protection by the League implies the exclusion of all individual interference by other Powers in the affairs of Danzig."<sup>22</sup>

Under Article 103 of the Treaty of Versailles the constitution of Danzig was drawn up "by the duly appointed representatives of the Free City in agreement with a high commissioner to be appointed by the League of Nations." This constitution was finally approved by the Council in May 1922 after amendments which stipulated, *inter alia*, that it cannot be modified without the League's permission. Decisions of the High Commissioner with relation to disputes between Poland and the Free City are subject to appeal to the Council, and on these appeals the Council has occasionally sought opinions from the Permanent Court of International Justice.<sup>23</sup> The present High Commissioner of the League of Nations at Danzig is Count Manfredi Gravina (Italian) whose second term of office runs until June 22, 1935. His predecessors have been Sir Richard Haking (British), 1920-22; M. S. MacDonnell (Irish), 1923-25; Jost van Hamel (Dutch) 1926-29.

<sup>22</sup> Report of Viscount Ishii, adopted by the Council on Nov. 17, 1920. Compare also *Convention between Poland and the Free City of Danzig* (concluded at Paris, Nov. 3, 1920), League Document 20. 4. 365. 2. Reference may be made to *Ten Years of World Co-operation*, Chap. XII, and to Otto Loening, *Die Rechtsstellung der Freien Stadt Danzig* (Berlin, F. Dümmler, 1928).

<sup>23</sup> See, for instance, *Official Journal*, July 1931, pp. 1135-37.

The League has also exercised direct administrative control in the financial stabilization of Austria and Hungary and to a lesser extent in that of Bulgaria and Estonia. It has established other administrative agencies in the field of refugee settlement in southeastern Europe. Although these functions, for the most part, have been of an emergency reconstruction character, they nevertheless create interesting precedents for the possible development of super-national administrative action on the part of the League.<sup>24</sup> A provision of interest in this connection is that which makes the Memel Harbor Board report annually to the League's Transit Committee, the chairman of which appoints one of the three members of this Baltic port authority.

#### THE THEORY SUMMARIZED

The system of continuous international co-operation evolved from war-time precedent by the League is thus not entirely uniform. In exceptional cases definite governmental activities are exercised by the League, either through its own administrative bodies or by control accorded to League agents over specified activities of national administrations. There are differences of organization as well as of method between the League departments which possess no super-national authority. But in theory a single principle is applicable to every activity where organized co-operation has not reached the stage of authorized administration. Committees of experts have been appointed or sanctioned by the Council (in both cases with Assembly approval) in each technical line for which the League has assumed an inter-governmental responsibility under the specific mandate, or by interpretation, of its organic law (the Covenant). These com-

<sup>24</sup> The best readily available account of these temporary administrative activities is found in *Ten Years of World Co-operation*. See also Hill, Chap. IV; Leo Pasvolksky, *Bulgaria's Economic Position*, Chap. V.



mittees meet periodically, in some cases at call, in order to formulate international policy in their particular subject. It is then the duty of the committee members, who are for the most part government officials holding important administrative posts in their respective capitals, to ascertain by the interchange of frank opinion the maximum program which will receive support from all, or nearly all, of the co-operating States. Having agreed upon the maximum acceptable program, perhaps by the drafting of an international convention, perhaps by less formal evidence of concord, the committee members return home bearing the tacit responsibility of pressing its adoption in the domestic administrations of which each is an official, or at least a trusted unofficial adviser. Generally, but not invariably, the committee meetings are held in the League Building at Geneva, where secretariat facilities are most readily available.

The theory behind the composition of a League committee can be made more clear by noting the membership in a particular case. Variations from type, according to the particular departmental activity, make it difficult to select any one committee as thoroughly representative. But its potential importance, and the fact that its members are appointed as advisers of expert qualification and not as government representatives, render the Economic Committee a good example for illustrative purposes. During 1931 its membership was constituted as follows:

Angelo di Nola, *chairman* (Italy), director-general of the Istituto italiano di Credito Fondiario, director-general at the Ministry of National Economy

Richard Schüller, *vice-chairman* (Austria), director of the Economic Section of the Department for Foreign Affairs

Miguel Casarès (Argentina), former under-secretary of state for agriculture

Sir Sydney Chapman (Great Britain), chief economic adviser to the British government

- François Dolezal (Poland), under-secretary of state for commerce and industry  
Lucius R. Eastman (United States), former president of the Merchants' Association of New York  
Paul Elbel (France), director of commercial agreements, Ministry of Commerce  
Nobumi Ito (Japan), counsellor of embassy, deputy-director of the Imperial Japanese Bureau for the League of Nations  
Fernand van Langenhove (Belgium), secretary-general of the Ministry of Foreign Affairs  
Harry A. F. Lindsay (India), Indian trade commissioner in London  
Vilhelm G. Lundvik (Sweden), former minister of commerce, director of the Federation of Swedish Industries  
Frantisek Peroutka (Czechoslovakia), head of section at the Ministry of Commerce and Industry  
Walter Stücki (Switzerland), director of the Commercial Division at the Federal Department of Public Economy  
Milan Todorovitch (Jugoslavia), economic adviser to the Ministry for Foreign Affairs  
Ernst P. A. Trendelenburg (Germany), secretary of state at the Ministry for Economic Affairs of the Reich

In addition to these fifteen active members, most of whom are always present at the regular quarterly meetings of the Economic Committee, there were in 1931 corresponding members in Brazil, Chile, China, Denmark, Estonia, Finland, Holland, Hungary, Latvia, Norway, Roumania, Spain, and Venezuela. These are also either government officials or prominent leaders in economic life enjoying the trust of their governments, whose duty it is to lend expert advice, from the various national viewpoints, on the feasibility and desirability of the current program before the Economic Committee.<sup>25</sup>

While strictly accurate, it is also somewhat misleading to call the Economic Committee and its sister technical

<sup>25</sup> Members of the Economic Committee hold office for three years. The outgoing members, if not replaced by others of the same nationality, become regular correspondents of the Committee. The experience and interest in this co-operative work which they have acquired in office on the Committee are thus preserved.

and advisory organizations, "League committees." They are that inasmuch as their membership is in each case appointed by the Council, or by the co-operating governments with the sanction of the Council. All international programs and policies recommended by these committees, moreover, must have the approval of the Council before any attempt is made to put them into effect. The committee members, however, are to some extent selected as national spokesmen even when they hold no official position, and during their conferences at Geneva they are expected to be able to present the viewpoint not merely of the technical expert but also of their home governments in the particular subject at issue.<sup>26</sup> This arrangement, of course, is of the essence of the theory of international administration upon which the League is operating. The average "League committee" is a body of national specialists, working co-operatively at the formulation of international policies which can come to fruition only by the agreement and support of the home governments, and for the execution of which, when agreed upon, the League Secretariat and the various governments are jointly responsible.<sup>27</sup>

#### RELATIONSHIP OF SECRETARIAT AND COMMITTEES

Without the aid, assistance, and advice of the Secretariat the League's technical and advisory committees would not have accomplished a small fraction of the work which stands to their credit. To put the fact con-

<sup>26</sup> In the above list of members of the Economic Committee it is noticeable that the American representative is without an apparent official character. But in point of fact the American representative co-operates very closely with the administration at Washington. Moreover, Mr. Eastman did not assume his post, in 1928, until his appointment had been indorsed both by the State Department and by the President. It is a little-known episode in American history that he refused to take the post until these indorsements were given him.

<sup>27</sup> The role of the private expert, as contrasted with that of the governmental official, in League committee work, is given consideration in Chap. XVI.

versely, it is the Permanent Secretariat which has enabled international committees to work smoothly, intelligently, and progressively. Generally speaking each section of the Secretariat is attached to one of these committees, serving as its own particular, miniature secretariat. Each section may thus be superficially compared with the civil service of a governmental ministry or department, if we remember always that the committees which they serve are not executive in nature but organs advisory to the Council, whose authority is required before approved policy can be recommended to the member States. The weak and intermittent nature of legislative control as exercised by the Assembly, which will be considered later, is thus compensated in the embryonic international government by the introduction of a new element—the committee system—between civil service and the Council as executive.

In its secretarial capacity the appropriate League section has as its minimum duty the preparation of the agenda, the handling of correspondence, the collection and classification of material, the development and integration of decisions taken by the committee. But a Secretariat section may also do much more than purely secretarial work for its committee. A strong and purposeful director of section will often lead his committee where a less dynamic director will be content to follow. Whether or not the director of section leads the conjoint League committee or is himself led, naturally depends also upon the composition and character of the committee. Another important factor is whether the particular department is primarily of a technical or of a political nature. The Council, representing the political interests of the Great Powers, maintains, as an example, a far closer scrutiny over the work of the Permanent Mandates Commission than it does over the work of the Health Organization. In consequence, the director of the Mandates

Section has far less policy-making power than has the director of the Health Section.<sup>28</sup> This is really another way of saying, as stated above, that the Technical Organizations have more power to initiate policy than have the Advisory Commissions.

However, when all allowances are made for differences in the character of League departments, it still remains true that personality counts a great deal in deciding whether the director of section shall play an important role in directing League policy. To some extent the section has the inside track, since it is always working on its particular problems, while the committees, composed of busy representatives of many nationalities, are grouped into a corporate whole only at their periodic meetings. Nevertheless, though the Secretariat section may take the lead in proposing it is always the advisory committee, and sometimes a small but recalcitrant minority thereon, which has the power of disposing, even without considering the control which vests in the Council and the ultimate authority preserved by the governments of the member States.

The general relationship between Secretariat sections and League committees and commissions being understood, it becomes appropriate to attempt a full tabulation of the latter system. These auxiliary organizations are the agencies which, either as an integral part of the League or definitely under its ægis, are steadily developing the new technique of international co-operation through the medium of continuous consultation. No classification in the subject can advantageously be made entirely

<sup>28</sup> It is a matter of common knowledge in the Secretariat that the Health Section, and more particularly its very able director, Dr. Louis Rajchman, is frequently used as an entering wedge in a nation which is not participating actively in the general League program. The work of the Health Organization is non-controversial and eminently successful. And it is more than mere coincidence that the extension of its activities to the Far East and South America has been followed by some quickening of interest in the general League program throughout those areas.

complete, for some committees are established merely to investigate and recommend on particular subjects, dissolving when their particular work is done. There are also permanent committees concerned with the efficiency and conduct of the League's internal machinery, such as the Supervisory Commission, which are not appropriate to the present consideration.<sup>29</sup> In Appendix B, however, are tabulated the permanent or semi-permanent organizations for external international co-operation which were in regular operation at the beginning of the League's second decade. Because of their intrinsic importance a few committees which had concluded their work by 1932 are included. On the other hand, none of the committees of the International Labor Organization are listed.

Certain further comments on this table may profitably be made before it is examined. The administrative commissions and to a lesser extent the Permanent Mandates Commission are direct and specific forms of international administrative activity. But among other auxiliary organisms of the League a form of international administration is developing *sui generis*, often without any defined treaty obligation. It is to be observed that in these organizations the parent advisory committee has been supplemented by various sub-committees. For these sub-committees, as will be noted in Chapter XVI, there appears to be evolving a technique of international administration more comprehensive than that of inter-governmental executive contacts, as described above.

The Appendix reveals the enormous complexity and great variety of League activities which have been developed during its first twelve years of operation. Obviously, no single study of general scope can hope to give more than a summary outline of the undertakings now spon-

<sup>29</sup> The work of the Supervisory Commission is explained in Chap. XIII below.

sored.<sup>30</sup> They will, moreover, increase as time goes on, though the tendency is much more in favor of seeing that the various established commissions do their work thoroughly than in the direction of adding further responsibilities. There are, perhaps, a few League bodies which can be singled out as non-essential, if not superfluous, in nature.<sup>31</sup> But these are exceptions to the general rule. Nothing has shown the desirability of the League in the present stage of civilization more clearly than the almost automatic manner in which its committees have evolved for the forwarding of numerous fundamental forms of international co-operation. The development has proceeded in that straightforward and natural manner which demonstrates the filling of an actual need.

#### CONSTITUTIONAL CHARACTERISTICS OF COMMITTEES

In every national legislature which is democratically chosen there are standing committees, more or less permanent in character, entrusted with the consideration and preparation of draft legislation on technical subjects. In this task the standing committees are empowered to hold hearings, summon expert witnesses, consult the opinion of interested groups, and otherwise secure information which will assist in making their final recommendations acceptable to the majority of the legislature. Like these, the League committees are also pre-legislative bodies, the conclusions of which must secure the approval of Council and Assembly; but after this comparison it is the differences and not the similarities which are striking.

<sup>30</sup> The work of the various League organizations is treated in some detail in *Ten Years of World Co-operation*.

<sup>31</sup> Most of these will be found in the field of intellectual co-operation. One instance may be cited. On July 21, 1930, the Sub-Committee on Arts and Letters, meeting at Geneva, instructed the Institute of Intellectual Co-operation "to summon, in consultation with the musician members of the Sub-Committee, a small number of experts on questions of pitch to study whether the work for the unification of pitch should be continued." (*Information Section Press Communiqué No. 4503*, of above date.)

The League committees, in the first place, are not composed of members of either of the League's deliberative organs and they meet habitually when those organs are not in session. Nor, barring exceptional circumstances, do they summon witnesses. Their membership being fundamentally technical, they do not need to. In other words they are largely functional in character, and thereby able to dispense with the reliance on professional advice essential to a committee which in the last analysis owes its composition to popular election. Since the League was established governmental functional committees in organic relation with the legislative arm have become more frequent. A Federal Economic Council was established in Germany under Article 165 of the Constitution of 1919 and the same trend is noticeable in other countries which retain the parliamentary system. Under dictatorships the trend towards functional advisory committees is naturally more pronounced.<sup>32</sup>

In the second place, the major connection of the League committees is not with the deliberative organs of Council and Assembly, even though these in theory suggest their work and in practise approve or occasionally table their findings. As has been shown, the essential liaison of a League committee is with the appropriate department of the participating governments, not with the Council and Assembly. This fact is forcefully demonstrated by the table in Appendix B, which shows that the United States has membership on thirty-six out of the seventy-five advisory, technical, and administrative bodies which are listed. To play a prominent role in this most vital part of League organization it is not necessary to be a member of the League.

Lastly, it should be emphasized that the League committee is far more dependent on the principle of unanimity than is a committee of a national legislature.

<sup>32</sup> Compare Lewis L. Lorwin, *Advisory Economic Councils*.



Although there is no binding unanimity rule in the technical committees of the League, as in the Council and Assembly, the desirability of reaching uniform agreement is no less strong. Hence comes the development of a distinguishable League attitude distinct from, and even to some extent at variance with, the sum total of the wills of the participating States.<sup>33</sup> The fact that unanimous agreement is always desired does not signify that progress is limited to the lowest common denominator which the separate governments would *prima facie* accept. Recalcitrant committee members can be won over by the persuasion of their fellows, influenced by the tendency of majority opinion, educated to co-operative action by evidence presented from the Secretariat section. The absolute necessity of preserving this mental flexibility in a League committee accounts for the combination of official nomination and personal independence which is an essential general characteristic of its membership. On the one hand the member should be able to influence his government in favor of the general policy decided upon at Geneva. On the other hand his position during the committee session must be that of a discretionary representative rather than that of a delegate bound by rigid instructions.<sup>34</sup>

#### NON-MEMBER PARTICIPATION IN COMMITTEE WORK

The importance of the committee system of international administration built up by the League is further demonstrated by the extent of non-member participation therein. Excepting only the five permanent members of the Council there is no member State which has representatives, official, quasi-official, or unofficial, on so large a

<sup>33</sup> Compare Robert Redslob, *Théorie de la Société des Nations*, p. 316.

<sup>34</sup> Pre-war international conferences had little or none of this theory of flexibility. Compare, for instance, Pitman B. Potter, *Introduction to the Study of International Organization* (2d ed.) Chap. XX.

proportion of League committees as has the United States, a non-member. Such participation would not have been given if there were anything forced or artificial in the work which these committees are doing. And as it is through the committees that the work of the League is developed and made effective it is clear that the United States has gradually become a strongly "Associated Power" *vis-à-vis* the League, regardless of the issue of formal membership.<sup>35</sup> From this phenomenon the question naturally arises as to whether formal League membership is really important to a State which is willing to co-operate, but is not ready to assume the responsibilities of membership. While any attempt to answer the question thoroughly would have to consider it both from the viewpoint of the non-member and from that of the League, and could scarcely be kept free from polemics, one or two of the considerations involved may properly be mentioned here.

A State which co-operates only in the committee work of the League is pursuing an unstable and unbalanced co-operation for the simple reason that the committees are not independent bodies, but geared to all the essential parts of the machinery which centers at Geneva. Committees can only undertake the examination of such subjects as are approved by the parliamentary organs of the League. Their work, when completed, can only be made effective by the sanction of these organs for what has been accomplished. It follows that the role of a country which has no share either in initiating or adopting the committee programs, by reason of absence from both Council and Assembly, is scarcely likely to be one of leadership in the committee.

There is also the consideration of inadequate membership in the Secretariat which, as has already been indicated

<sup>35</sup> For a detailed examination of the extent of this association see *American Co-operation with the League of Nations*, Vol. II, No. 7 (July 1931) in a series of studies prepared by the Geneva Research Center.

and will be more thoroughly examined in the next two chapters, plays a very prominent role in the direction of League policy. A Secretariat section and the conjoint committees work in the closest collaboration. For the integration of national policies and interests into a harmonious international whole it is therefore necessary that equal attention be given to both the Secretariat and the committee side of the League's administrative work. Americans are found on approximately half of the advisory bodies, and in consequence the United States is not altogether unrepresented in the technical departmental work of the Secretariat, but virtually no nationals of other non-member States are ever found there.

It may be argued that non-representation of any particular nation on the Secretariat is immaterial, since its officials are supposed to have an international rather than a national viewpoint, and are definitely expected not to act as formal representatives of the countries from which they are appointed. But in the present consideration this thesis is inconclusive. Collectively, the Secretariat sections can serve as an international civil service only because they combine and fuse the viewpoints of many nationalities. When there is no non-member national available to interpret the political philosophy and the popular psychology of his countrymen as applied to a given problem, there is always danger that the suggested solution of the problem will leave out of account certain elements which are vital if participation of that country is to be secured later.

As long as any important State abstains from League membership, it is not to be expected that its nationals will be welcomed on the Secretariat. But this does not mean that the results of exclusion are desirable either for the non-member or for the League. It is a part of the basic theory of committee work of any kind that these representatives of various interests and viewpoints meet to

consider, to revise, and ultimately to indorse or to disown, plans which have been prepared in advance. As Sir Arthur Salter has pointed out, it is true of committees in parochial, national, or international administration, that they:

- 1) Can control but cannot direct administration.
- 2) Can do much to insure public support for administrative measures.
- 3) Are able to secure action in accordance with a coherent plan, if composed of members with executive authority.
- 4) Are all but invariably more effective if their authority is advisory rather than initiatory.<sup>36</sup>

Certainly all of these points are valid as applied to the committee work of the League, particularly its "advisory" rather than "initiatory" character. And it results from this validity that American co-operation, though widespread and pronounced in character, is of a negative nature. Representatives of a non-member State on a League committee can block policies which seem inimical to their country. But they cannot readily initiate and push other policies in the promotion of which their country may be vitally interested. The importance of the committee work forces non-member participation, yet participation which does not go beyond committee membership is unfortunately doomed to be primarily of a defensive character.

#### CONTINUOUS ACTIVITY OF COMMITTEES

The dozens of League committees and commissions which have been listed in the Appendix explain why there is activity at Geneva the year round. Some of this work, such as that of the administrative commissions and certain of the responsibilities of the Health and Financial Organizations, is necessarily confined to particular localities, with the incidental advantage of making the League

<sup>36</sup> *Allied Shipping Control*, pp. 261-62.

of Nations a very vital reality in different parts of the world. Various other committees, as a matter of convenience or policy, will on occasion hold their sessions in appropriate national centers. But the great majority of the committee meetings take place in the Secretariat Building at Geneva, where expert technical assistance is always available, where all the documentation is assembled, and where extra-territorial privileges and a thoroughly international atmosphere prevent any delegation from being placed in the invidious position of host or visitor.

The mere establishment of a permanent headquarters for international conferences has in itself brought a great advance in the technique of international administrative co-operation. This is strongly brought home to the observer who watches the seasons change through a cycle at Geneva, with scarcely a week in the year devoid of one or more committee meetings. The summer, of course, is the season when Geneva has most of its tourist visitation. But so far as actual business goes July and August are never more important in the League calendar than January and February, or any other two months.

Like any national government, therefore, the League functions busily and continuously throughout the year. The annual meetings of the Assembly and the sessions of the Council in January, May, and September are only dramatic aspects of a system which is now uninterruptedly and unceasingly at work. Indeed, the parts played by the Council and Assembly have been greatly overdramatized and undoubtedly a better understanding of the League as a whole would be obtained if they were seen in a more accurate perspective. To do this is not a matter of minimizing the role of these two organs but one of appreciating at true value the unsensational work of co-ordinating national policies which is steadily carried on through the League's committee system. There is,

of course, a certain thrill in watching the representatives of over fifty nations, white, yellow, brown, and black, take their seats at the opening of a League Assembly. The presence of statesmen whose names are always in the newspapers makes the Council seem a dramatic body. But it is a limited imagination which cannot derive an equal stimulus from passing the Secretariat Building late on a stormy winter night, long after the close of the tourist season. Behind its lighted windows the members of some section, perhaps all of different nationalities, are working overtime in order that there may be no hitch or confusion in the agenda of a forthcoming committee whose work may be as vital as it is unspectacular.

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## CHAPTER VIII

### THE ORGANIZATION OF THE SECRETARIAT

The constitutional powers of the Secretariat are based upon the references to this organ, or to the Secretary-General as its executive head, found in seven of the twenty-six articles contained in the Covenant.<sup>1</sup> The text of this organic act, however, contains no adequate indication of the key position acquired by the Secretariat in the League's system of international co-operation.

For instance, the Covenant makes no mention whatsoever of the complicated procedure developed by the League for the protection of minority groups "bound together by a consciousness of kind and feeling themselves separate and different from the nationality dominating the State."<sup>2</sup> During the drafting period President Wilson proposed the incorporation of an article safeguarding the position of minorities. But it was thought preferable to handle the problem through special treaties and conventions extending to all the countries of Eastern Europe the obligations towards minorities assumed by Austria, Bulgaria, Hungary, and Turkey in the treaties of peace.<sup>3</sup> Under the minority treaties specified rights of equality, freedom, and security are guaranteed to racial, religious, and linguistic minorities by the League. While responsibility for the upholding of these guarantees rests with the Council,<sup>4</sup> it is the Minorities Section of the Sec-

<sup>1</sup> Articles 2, 6, 7, 11, 15, 18, and 24.

<sup>2</sup> This definition of a national minority is now generally accepted. Compare Rudolf Ramlow: *Das Minderheitenschutzverfahren des Völkerbundes* (Berlin, Verlag Dr. Ebering, 1931), p. 17.

<sup>3</sup> See p. 38 above. A useful historical and descriptive survey of the League's system for protection of minorities is found in *Ten Years of World Co-operation*, League of Nations, Chap. XI.

<sup>4</sup> See p. 431 below.

retariat which handles all the important preliminary work of analyzing the petitions sent by those who believe minority rights have been infringed. The magnitude and delicacy of this task are indicated by the fact that from June 1, 1930 to May 31, 1931 an average of four such petitions per week—204 in all—was deposited with the Secretariat. Of the petitions submitted in this one year 131 were declared non-receivable for statutory reasons and 73 turned over to the Council for examination and action.<sup>5</sup> Yet the Covenant provides no intimation whatsoever of the existence of this very vital Secretariat activity.

#### THE SECRETARIAT IN THE COVENANT

The articles of the Covenant which attempt to define the work of the Secretariat are, moreover, of very unequal importance. Article 2 merely names this organ as the permanent agency which, in conjunction with Assembly and Council, shall effect "the action of the League." Article 7 assures the Secretariat staff diplomatic privileges<sup>6</sup> and provides that positions thereon "shall be open equally to men and women." In the higher executive positions this "equal rights" clause is honored in the breach rather than the observance, and naturally so, since women can scarcely be expected to assume leadership in the League's civil service until they have done so in a majority of the countries composing the League's membership. Until 1931, one Secretariat section—that on Social Questions—was headed by a woman. Since her resignation all officials above the grade of member of section have been men, excepting only the chief of service for the interpreters and translators.

<sup>5</sup> *Official Journal*, August 1931, p. 1605.

<sup>6</sup> Compare pp. 222-23 above.



In Article 18, providing for treaty registration, the role laid down for the Secretariat is scarcely more than clerical in nature. The assertion in no way minimizes the great importance of this work. An indication of its magnitude is found in the fact that the number of treaties registered with the League reached two thousand on April 25, 1929, and that the number of volumes published in the Secretariat's treaty series was seventy-seven at that date. This was exactly ten years after the finishing touches were being given to the Covenant in Paris.<sup>7</sup>

Article 24, which would have made the Secretariat a clearing house of information "in all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaus or commissions," has not worked out according to expectation. A small section of the Secretariat has this work in charge, but much of the vague original idea has since 1924 been turned over for development to the Institute of Intellectual Co-operation in Paris. Establishment of the International Cinematographic Institute at Rome in 1928 has further forwarded decentralized international policy in cultural matters.

Formal rules concerning the relations between the League and international bureaus set up under its authority were approved by the ninth session of the Assembly, on September 20, 1928.<sup>8</sup> All told five organizations have so far been granted this connection, the latest being the International Exhibitions Bureau, placed under League direction by the sixty-third session of the Council, on May 20, 1931. Nevertheless, the tendency in recent years has been to encourage autonomy in the case of the more important international institutes brought under the

<sup>7</sup> Up to June 30, 1931 the number of treaties which had been registered with the League was 2,731. If secret treaties, or secret sections of treaties, have been concluded by one or more League members since 1919, under Article 18 of the Covenant they are not binding. Compare p. 102 above.

<sup>8</sup> League Document A. 71. 1928. XII.

League's ægis, and to discourage the assumption of responsibility for less vital organizations. The first part of this tendency has been illustrated in the negotiations to establish an organic connection between the League and the International Institute of Agriculture, "while maintaining the independent character of the Institute." Unwillingness to take over an organization merely because it has an international orbit was demonstrated in reference to the request of the International Wine Office to be placed under League direction.<sup>9</sup>

In 1919 the official British Foreign Office commentary on the League of Nations Covenant said of Article 24 that it "is of great importance as it enlarges the sphere of usefulness of the Secretariat of the League to an indefinite degree."<sup>10</sup> Yet by 1932 Article 24 of the Covenant had become of secondary significance, largely because the Secretariat has found it imperative to concentrate on securing order and system in a few phases of international activity instead of nibbling around "in all matters of international interest." The change of outlook is significant. It illustrates the transition of emphasis from the vague generality of international co-operation to the precision of attempted international administration in well-defined fields.

In three articles of the Covenant (6, 11, and 15), and in each case with reference to the powers of the Secretary-General, is found real anticipation of the powerful administrative machine which the Secretariat has become. In Article 6, which gives very general definition to this organ, is found the highly important provision that: "The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council." On the foundation of this provision much of the power of the Secretariat has been built. For it gives the Secretary-General, or such deputies as he may select, an official

<sup>9</sup> Compare *Official Journal*, June 1930, pp. 516-17.

<sup>10</sup> *Parliamentary Papers*, 1919, Cmd. 151.

position not merely in the Assembly and Council, but also in every commission and committee to which these bodies delegate specific duties. The Secretariat, in other words, is not exceeding its constitutional prerogative if the Secretary-General or his deputies give advice and counsel which may result in guiding or influencing the course of policy in all undertakings countenanced by the League.

Again, in Article 11, which declares any war or threat of war "a matter of concern to the whole League," paragraph 1 contains the provision that "in case any such emergency should arise the Secretary-General shall on the request of any member of the League forthwith summon a meeting of the Council." As Sir Frederick Pollock noted as early as 1922, this clause postulates "continuous vigilance and efficiency on the part of the Secretariat."<sup>11</sup> More than that, it places on the Secretariat rather than on the Council the first responsibility for action in a political emergency, thereby insuring that the League's civil service shall be something more than what is understood by those words in strictly national politics. In 1926 Sir Eric Drummond noted that:

No procedure has been laid down to govern the action of the Secretary-General under the first paragraph of Article 11, and it seems essential that he should remain free from all necessity of following any sort of procedure laid down beforehand in order to avoid any conceivable risk of delay.<sup>12</sup>

The third case in which the Covenant foreshadows far-reaching powers for the Secretariat is found in the last sentence of the first paragraph of Article 15, which reads as follows:

Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

<sup>11</sup> *The League of Nations* (2d ed.), p. 138.

<sup>12</sup> Compare T. P. Conwell-Evans, *The League Council in Action*, p. 25.

The possibilities inherent in this provision were dramatically revealed when it was invoked against Japan at the sixty-sixth session of the Council, immediately after the military forces of that country had occupied and partially devastated Shanghai, at the end of January 1932. The Chinese delegate on the Council, Mr. W. W. Yen, in a formal communication to that body charged Japan with acts of aggression "likely to lead to a rupture" and demanded that League action should be extended to Article 15 from Article 11, under which League action concerning the Sino-Japanese dispute had at first been confined. The Secretary-General duly accepted the Chinese notification and read it at the opening of the public Council session on January 29, acting there in his capacity of secretary to the Council. The President of the Council, M. Joseph Paul-Boncour, thereupon ruled, over Japanese protest, that "as soon as application of Article 15 is requested, that article must be applied." By this action the Secretary-General was given discretion to "make all necessary arrangements for a full investigation and consideration" of the Japanese seizure of Shanghai. His immediate action was to form a Council liaison committee from diplomatic representatives of Council members stationed in the victimized Chinese city.<sup>13</sup>

The provision, in Article 6(4), by interpretation of which the Secretary-General or one of his deputies serves *ex-officio* as the secretary of every committee established under League auspices, is of British origin. So also is his authority to summon the Council in special session and to arrange investigation of disputes likely to lead to a rupture.<sup>14</sup> Indeed, none of the other delegations at the Peace Conference visualized the importance of the Secretary-General's office with anything like the clarity of the British negotiators. They were the first to recognize

<sup>13</sup> Compare 486 below.

<sup>14</sup> Compare pp. 48-49 above.

that the man who holds that position will by his ability and personality—as much the latter as the former—affect the whole character of the League. For it is the unenviable task of the “S.G.,” as he is familiarly known, to be forever steering a narrow course between the Scylla and Charybdis of conflicting national jealousies and the political machinations which spring therefrom.

To British influence, moreover, may be attributed the absence from the Covenant, as regards the Secretariat, of those rigid definitions which have hampered the natural course of the League’s evolution in other lines. There is reasonable doubt as to whether the Assembly and Council, although their duties during the drafting period of the Covenant were given much closer attention than those of the Secretariat, can admit parallelism with any established organs of national government. But there is no question about the basic function of the Secretariat. It is the civil service of the embryonic system of super-national government which centers at Geneva. It must not, however, be regarded as being nothing more than a civil service.

#### DEPARTMENTAL ORGANIZATION OF THE SECRETARIAT

Like the civil service of any national government the League Secretariat is divided into departments, known as “sections.” These are responsible for the administrative work in the various international activities entrusted to the League by its Covenant or by other international engagements. And it is noteworthy that this departmental organization, in essentials the same as that which obtains today, was established very early in the history of the League.

The Covenant of the League of Nations was finally adopted at a plenary session of the Peace Conference held on April 28, 1919. One week afterwards, on May 5, 1919, Sir Eric Drummond as the first Secretary-General

established the provisional Secretariat in London, and with his principal colleagues began to plan the permanent organization. A year later, on May 19, 1920, when the provisional Secretariat appointments were approved by the fifth session of the Council, ten of the twelve sections into which the Secretariat is now organized were already established. Actually, indeed, eleven of these sections had then been created, for one of the present number came into existence at the beginning of 1931 through the formal division of the original Economic and Financial Section into its component parts. In fact, the only new Secretariat section added since 1919, the year which gave birth to the League, is that on disarmament, which came into being as a result of this fifth Council session.<sup>15</sup> In the matter of organization the Secretariat has from the outset possessed a greater degree of stability than any of the other central agencies of the League.

The Secretariat sections, twelve in number, are concerned with the following subjects, their constitutional bases being placed in brackets:

1. Administrative Commissions and Minorities<sup>16</sup>  
[Peace and Minorities Treaties]
2. Communications and Transit  
[Covenant, Articles 16(3) and 23(e)]
3. Disarmament  
[Covenant, Articles 1(2), 8, 9, 16(2), and 23(d)]
4. Economic Relations  
[Covenant, Articles 16(3) and 23(e)]
5. Financial, including Economic Intelligence Service  
[Covenant, Articles 16(3) and 23(e)]

<sup>15</sup> For a critical examination of the original organization of the Disarmament Section see Salvador de Madariaga, *Disarmament*, Part II, Chap. 5. Señor de Madariaga was in charge of this section from 1921 to 1927. The section was actually initiated by a resolution of the First Assembly. See *Official Journal*, S. S. January 1921, p. 31.

<sup>16</sup> It was announced in 1930 that "the Secretary-General contemplates, later on, transferring the administrative commissions to another section," presumably the Political Section. (League Document A. 16. 1930, p. 14.) The change had not been made at the time of publication of this study.

6. Health  
[Covenant, Articles 23 (f) and 25]
7. International Bureaus and Intellectual Co-operation  
[Covenant, Article 24]
8. Mandates  
[Covenant, Articles 22 and 23 (b) ]
9. Social Questions and Traffic in Opium<sup>17</sup>  
[Covenant, Article 23 (c) ]
10. Information  
[Covenant, Preamble]
11. Legal  
[Covenant, Article 18]
12. Political  
[Covenant, Preamble]

These sections fall into two broad divisions, the first ten being primarily attached to one or more of the League's Advisory, Technical, or Administrative Organizations, while the last three are not miniature secretariats to special organizations, but are designed to be of general utility to the entire mechanism.<sup>18</sup> It is noticeable that in the case of two of them the constitutional justification for existence roots in the broad permissive wording of the preamble to the Covenant. This division into sections of specialized and general nature is inherent in the character of their respective functions. The fact that the sections were established first, and the organizations which they serve built up afterwards, may be emphasized. It is an indication of the leading role which the Secretariat has throughout played in the evolution of League policy.

In addition to the sections named above there is in effect a thirteenth which is placed in a separate category because concerned only with internal administration.

<sup>17</sup> The eleventh session of the Assembly decided that this Section should be divided into its component parts, thus creating a Social Questions Section and a Traffic in Opium Section. The Secretary-General, however, decided to defer this division, arguing that his policy "though not in accordance with the letter of the decision of the Assembly, was in no way contrary to its spirit." See *Official Journal*, October 1931, p. 1938.

<sup>18</sup> Compare Appendix B.

Here are concentrated the various bureaux and offices concerned with the internal workings and smooth functioning of the Secretariat itself.

1. The Interpreting and Translating Service, divided into an English section and a French section, each staffed by a dozen or so skilled linguists who handle the translating at all League committee meetings as well as at the Assembly and Council sessions.<sup>19</sup> Connected with this office is the Précis-Writing Service, also with French and English sections, which is responsible for the verbatim reporting, the keeping of minutes, and the editing of the various official periodicals.

2. The Publications and Printing Service, with a staff of about thirty, supervises the production of the numerous League publications, the printing of which is in some cases done in France or England, in others in Geneva or other Swiss cities.<sup>20</sup>

3. The Central Services Department handles the stenographic work, mimeographing, distribution of current documents, telephone exchange, postal service, and has attached to it such miscellaneous, though not unimportant, functionaries as the League's nurse and its consulting medical officer. During 1931 the Secretariat's stenographic "pool" employed about fifty persons, a number of them able to take dictation in both English and French.

4. The Internal Control Office is the division in charge of buildings, grounds, restaurant service, ushers, watchmen, messengers, and all the multifarious details of building equipment and staff.

5. The Personnel Office handles such matters as staff records, staff provident fund, appointment applications.

6. The small but important Office of the Treasurer has the Accounting Division attached to it.

<sup>19</sup> The League has frequently placed its interpreters at the disposal of international conferences on reparations and other subjects of an official character.

<sup>20</sup> The scale of operations of the League's Publications Department is not generally realized. In recent years the amount spent annually in printing has been nearly \$300,000, of which approximately one-quarter is recovered in sales. In 1929 the total copies of documents printed was just under 1,500,000 and the number of pages set up was 55,288. The League now conducts the largest publishing house in Switzerland and its volume of output already compares favorably with that of the government printing offices of many smaller nations.



7. The Registry (archives department) gives employment to about twenty persons.

8. The Library is run on the admirable principle that it should be useful not merely to those officially connected with the League, but also to all resident students of any phase of its activities.

With the growth of Secretariat activities its internal administration has become steadily more complicated, and will inevitably increase in scope when the permanent League buildings are completed and occupied.

#### THE EMBRYONIC DIPLOMATIC SERVICE OF THE LEAGUE

There remains one other division of the Secretariat, concerned with its external relations, which has much of the autonomy of a separate section, though not entitled to be classified as such. This is the Bureau for Liaison with Latin America, created on an experimental basis in 1923, but after nine years of continuous existence entitled to be regarded as quasi-permanent in nature. Since its origin this little bureau, which during 1932 was staffed by one member of section and two stenographers, has been in charge of a Panaman (Señor C. Rodriguez), who maintains relations with part-time correspondents in several Latin American capitals. The underlying objective is to develop contacts between the League and "the governments of the Latin States of America."<sup>21</sup> The correspondents of the bureau are usually located in those South American countries which have no nationals employed in the League Secretariat.<sup>22</sup>

More highly developed, and more permanently organized than the liaison service with Latin America, is the

<sup>21</sup> The quotation is from the *Noblemaire Report* (League Document A. 3. 1921, Appendix VI) which first recommended establishment of this Bureau for Liaison with Latin America. The bureau was confirmed, with the understanding that it "must not be regarded as a permanent organization," by resolution of the Fifth Assembly. See *Official Journal*, S. S. No. 21, October 1924, p. 35.

<sup>22</sup> In 1932 the bureau was maintaining correspondents in Chile, Colombia, Dominican Republic, Haiti, Honduras, and Paraguay. Each receives a salary of \$1,200 per annum from the League.

system of offices maintained by the Information Section of the Secretariat in the capitals of States which are permanent members of the Council. Of these offices that in London, in the charge of a member of section, most nearly approaches the status of a liaison bureau between the League and a national government. The offices in Paris, Rome, Berlin, and Tokyo have "correspondents" in charge, and are more strictly information offices, both from the League to the country in question and from that country to the League.<sup>23</sup> The International Labor Office maintains in Washington one of its eight National Correspondence Bureaus;<sup>24</sup> but the League Secretariat has as yet no official representative in the United States, though several Americans are on the staff of the Secretariat in Geneva.

The importance of the liaison office system as an incipient diplomatic service of the League is apparent. For reasons of economy it is a trend which is likely to be developed slowly, but probably the development will be none the less sure. On the legal competence of the League both to send and to receive accredited diplomatic envoys Messrs. Schücking and Wehberg are emphatic:

The League of Nations has the right to send and to receive ambassadors, as has been the case heretofore with all leagues of States in history, even though the statute of the League of Nations says nothing concerning this right.<sup>25</sup>

The accrediting of diplomatic envoys to the League by various governments is far more advanced than the

<sup>23</sup> The Berlin office is headed by a chef de bureau. The League has official correspondents, without bureaus, at The Hague and Nanking, also a correspondent for Turkey, who is stationed at Geneva.

<sup>24</sup> The other seven National Correspondence Bureaus are at Berlin, Delhi, London, Nanking, Paris, Rome, and Tokyo. The International Labor Office also maintains correspondents in Belgrade, Brussels, Bucharest, Budapest, Buenos Aires, Madrid, Prague, Rio de Janeiro, Vienna, and Warsaw.

<sup>25</sup> *Die Satzung des Völkerbundes*, 2d ed., p. 116 (writer's translation). Compare also Jean Ray, *Commentaire du Pacte de la Société des Nations*, pp. 252-53.

very embryonic diplomatic representation maintained by the League in the capitals of certain member States. In November, 1930, Professor Pitman B. Potter listed forty-three countries, including Mexico, Turkey, and the United States although non-members of the League, which maintain either at Geneva or elsewhere "permanent national agents for liaison with the League of Nations."<sup>26</sup> In the case of Mexico the accrediting of an "observer" later proved a preliminary to full League membership. Estonia, on February 16, 1931, became the forty-fourth State to take this step. The formal letter from the Estonian Minister of Foreign Affairs to the Secretary-General, announcing the appointment of the permanent delegate, may be quoted as illustrating the status of these national agents accredited to the League:

The Estonian government, led by its firm attachment to the noble principles inspiring the activity of the League of Nations, and its desire to co-operate more closely and continuously in the great work of this high international organization, has intrusted M. August Schmidt, its envoy extraordinary and minister plenipotentiary to His Majesty the King of Italy, with the mission of representing it as permanent delegate to the League of Nations.

In bringing the above information to your knowledge, I trust that this appointment will help to enhance the effectiveness of Estonia's participation in the work that the League of Nations has undertaken or may undertake in the future, and I am sure you will cordially welcome M. Schmidt and repose full confidence in him in the exercise of his functions.

In the firm conviction that M. Schmidt's conscientious performance of his duties will consolidate the close ties between Estonia and the League, etc.<sup>27</sup>

<sup>26</sup> In a study on *Permanent Delegations to the League of Nations*, Vol. I, No. 8 of a series prepared under the auspices of the Geneva Research Center. The beginning of this development was noticeable as far back as 1921. Compare League Document A. 3. 1921, p. 51. See also pp. 47-48 above.

<sup>27</sup> *Official Journal*, May 1931, p. 934. The importance attached to this diplomatic representation at Geneva was illustrated when the Hungarian government, early in 1932, decided to close its legation in Berne as an

## THE PROBLEM OF THE UNDER-SECRETARIES

In general charge of every part of the complicated machinery of the Secretariat, comprising in 1931 a total payroll of 677 persons in Geneva, with 42 elsewhere, is the Secretary-General.<sup>28</sup> His administrative responsibility is shared by a Deputy Secretary-General and three Under Secretaries-General. There is a significance to which we shall return in the fact that these five posts have to date been distributed among nationals of the five Great Powers which are permanent members of the League's Council, the Secretary-General (Sir Eric Drummond) being a British subject, his Deputy (Joseph Avenol) being French, while the three Under-Secretaries (the Marquis Paulucci, Yotaro Sugimura, and Albert Dufour-Feronce) were in 1932 respectively Italian, Japanese, and German. The original plan of organization called for an American Under Secretary-General and Mr. Raymond B. Fosdick was actually appointed to that post in 1919, his resignation following the Senate's failure to ratify the Peace Treaty, and thereby the Covenant. The German Under-Secretary was added when Germany entered the League on September 8, 1926.

No problem of Secretariat organization has caused more dissatisfaction, even bitterness, both among the staff of the League's civil service and in the Assembly, than this practise of reserving the principal executive posts for nationals of the Great Powers. The issue was not raised

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economy measure, although retaining its "resident minister" at Geneva. Under financial stringency it was the representation at the national capital of Switzerland, not the representation at the international capital in Switzerland, which was affected.

<sup>28</sup> Since the initial period of organization was completed the increase in the Secretariat staff, in spite of stringent efforts to keep it small, has averaged some twenty persons each year. In 1931 the payroll of the International Labor Office comprised 381 employees of all grades in Geneva, with 43 elsewhere. The total Geneva staff of the League was therefore 1,058, making with their families a perceptible percentage of the population of this city (approximately 130,000 in 1931).

in the report of the first (Noblemaire) committee to investigate the organization of the Secretariat, in 1921. But in successive Assemblies the seeming inequity of the custom was referred to with increasing vigor, particularly in the Assemblies of 1928 and 1929. The Tenth Assembly, in order to secure "the best possible administrative results for the Secretariat, the International Labor Office and the Registry of the Permanent Court of International Justice," appointed a committee of inquiry of thirteen members to give fundamental examination to the organization of the League's civil service.<sup>29</sup> This Committee of Thirteen held two sessions, from January 28—February 7 and from June 16—29, 1930, and brought in majority and minority reports of great political and constitutional interest.<sup>30</sup>

Various conclusions of those reports will be referred to at appropriate places in the following pages. So far as the problem of the Under-Secretaries is concerned, the Committee of Thirteen reached no agreement. The solution proposed by the majority was to increase the number of Under-Secretaries to eight, with the understanding that the five to be appointed would be named by the Secretary-General from among nationals of States not permanently represented on the Council. "Nor is there any reason," the majority maintained, "why the Secretary-General or the Deputy Secretary-General should always be a national of the larger States." Under the majority report the principal officers of the Secretariat would consist of the Secretary-General, Deputy Secretary-General, eight Under Secretaries-General, and six directors of section, the Under-Secretaries and directors being each in charge of one of the fourteen distinct Secretariat sections already listed.<sup>31</sup> The essential idea behind

<sup>29</sup>*Official Journal*, S. S. No. 74, October 1929, pp. 33-34.

<sup>30</sup>League Document A. 16. 1930.

<sup>31</sup>Counting Internal Administration as a distinct section and anticipating division of the Social Questions and Traffic in Opium Section into its two component parts.

the majority report was therefore a reduction in the importance of the Under-Secretaries, who were to be made distinguishable from directors of section in title only.

The minority report, on the other hand, proceeded on the theory that the office of Under-Secretary should be made more rather than less important and would have emphasized the prerogative acquired by the Great Powers in the distribution of these posts. Signed by Count Bernstorff (Germany) and Signor Gallavresi (Italy) the minority report provided for the abolition of the post of Deputy Secretary-General and an increase in the number of Under-Secretaries to five. Of these, it was intimated, only one should be a national of a country not permanently represented on the League Council. The minority report also emphasized the desirability of establishing an advisory committee of the higher executive officers, exercising a sort of cabinet function which would somewhat limit the present unique authority of the Secretary-General in the Secretariat organization. A few weeks after the publication of the report of the Committee of Thirteen the Italian government issued a memorandum supporting the position taken by the minority, and tacitly indicating that the function of Signor Gallavresi had been that of official Italian spokesman on the Committee of Thirteen, and not that of an independent expert. This memorandum thereby threw into bold relief the political considerations now attached to the post of Under-Secretary.

The Fourth Committee of the Eleventh Assembly held prolonged debate on these majority and minority reports concerning the principal officers of the Secretariat. These discussions were further enlivened by the introduction of a third proposal, which developed a good deal of support from representatives of the smaller Powers,

demanding complete abolition of the post of Under-Secretary. Eventually it was decided to have the question of the Under-Secretaries re-examined by a special committee, instructed to report on the subject to the Twelfth Assembly.

This committee, however, sidestepped the major issues involved, so that the Twelfth Assembly, in adopting the committee report on September 29, 1931, decided "that the framework of the higher ranks of the Secretariat should be provisionally maintained as it stands." In order not to bind the hands of the successor to Sir Eric Drummond this Twelfth Assembly resolution also provided that new or renewed contracts with the Deputy Secretary-General or Under-Secretaries, which had previously been for seven-year terms, "should have a maximum duration of three years," and should be subject to denunciation within a year from the date on which the new Secretary-General assumes his duties.<sup>32</sup>

Two points in the general discussion were, however, decided by the Eleventh Assembly on the advice of its Fourth Committee. One of these was that the Secretariat should have fourteen sections, which meant splitting the Economic and Financial and the Opium and Social Questions Sections into their component parts and raising Internal Administration to the status of a single section.<sup>33</sup> The other decision was the rejection of the minority proposal for the establishment of an advisory board of Under-Secretaries, with power to limit the authority of the Secretary-General. It was even questioned whether such a board would be constitutional, in view of the supreme position in the Secretariat given to the Secretary-General by Article 6(3) of the Covenant.<sup>34</sup>

<sup>32</sup> *Official Journal*, S. S. No. 92, October 1931, p. 30. See also League Document A. 91. 1931. X.

<sup>33</sup> Compare footnote 17, p. 269.

<sup>34</sup> Compare League Document A. 86. 1930. X, pp. 6-7.

## DIRECTORS AND CHIEFS OF SECTION

Next to the Under-Secretaries in the Secretariat hierarchy come the directors and chiefs of section. The organization is at this stage rather ill defined, since two of the three Under-Secretaries themselves serve as directors of section, the third one having as his particular charge the oversight of all the internal administration, which during 1931 was also unified into a section. The basic reason for this lack of precision is the inevitable compromise between political expediency and functional efficiency, doubtless to be expected (and certainly found) in an international civil service including representatives from over forty different countries. The necessity to the organization of the Secretary-General and his Deputy is apparent, for the latter is kept busy by his particular duty of supervising and co-ordinating the activities of the League's Technical Organizations. But in the case of the Under-Secretaries it may be argued that the first consideration was to find high executive posts for nationals of Italy, Japan, and Germany, and the second consideration the fitting of duties to those posts.<sup>85</sup>

It is because their duties as Under-Secretaries pure and simple would have been sinecures that the Japanese official was made director of the Political Section and the German official appointed director of the section on International Bureaus and Intellectual Co-operation. As the League expands, however, there may be a tendency for these Under-Secretaries to find an increasing amount of impor-

<sup>85</sup> A Frenchman, M. Paul Mantoux, was director of the Political Section until the end of 1926, up to which time Dr. Inazo Nitobé, of Japan, combined one of the two under-secretaryships with the directorship of the section on Intellectual Co-operation. German entry into the League coincided with the expiration of the seven-year appointments of these officials and facilitated a shift of nationality in the succession. Herr Dufour-Feronce of Germany took Dr. Nitobé's directorship as a new Under-Secretary, while Mr. Sugimura took the directorship of M. Mantoux in addition to the under-secretaryship which he inherited from Dr. Nitobé.



tant work aside from their defined responsibilities as directors of section. There is room in every British government for ministers whose ostensible duties are those of Lord Privy Seal, or Chancellor of the Duchy of Lancaster. Similarly one may foresee a time when Under Secretaries-General would be constructively useful to the League without holding clearly defined portfolios. On the other hand the movement to abolish the post of Under-Secretary is likely to advance rather than recede unless all those holding the title show by their actions that they are not to be regarded as spokesmen of national governments strategically located in the heart of the Secretariat.

The sections of the Secretariat under directors of section who have no other title are nine in number. They are, with the name and nationality of the officer in charge in 1932, as follows: <sup>86</sup>

- Administrative Commissions and Minorities (P. de Azcarate y Florez, Spanish)
- Communications and Transit (Robert Haas, French)
- Disarmament (A. Aghnides, Greek)
- Economic Relations (Pietro Stoppani, Italian)
- Financial (Alexander Loveday, British)
- Health (Louis Rajchman, Polish)
- Information (Pierre Comert, French)
- Mandates (Vito Catastini, Italian)
- Social Questions        }
- Traffic in Opium        } (Eric Ekstrand, Swedish)

Comparing these sections with the complete list given on pages 268-69, it will be seen that three are here lacking. In two of these (Intellectual Co-operation and Political Questions) the only organizational difference is, as explained above, that their directors are also Under

<sup>86</sup> Since the Twelfth Assembly the Treasurer of the League (Mr. Seymour Jacklin, South African) has also enjoyed the rank of director, although the treasury is not classified as a separate section.

Secretaries-General. In fact, though not in name, the Legal Section is in the same case. It is in charge of the League's legal adviser (in 1932, Dr. J. A. Buero, Uruguayan) who has that general duty in addition to being director of the Legal Section. This office carries the same general status and the same salary as those of the Under-Secretaries. There is no real reason why the Legal Adviser should not be called a fourth Under Secretary-General and to do so would help somewhat against the contention that all the most important executive posts in the Secretariat are reserved for nationals of the Great Powers.

During the League's first decade certain Secretariat sections were headed not by full directors but by an officer entitled "chief of section," a grade commanding somewhat lower salary and indicating a position of somewhat less executive importance than that of director. The Communications and Transit Section, for instance, was for years under a chief of section (M. Robert Haas) because originally it was subject to the general supervision of the former director of the Economic and Financial Section (Sir Arthur Salter), thus lacking complete autonomy. The Social Questions and Opium Section was also in charge of a chief of section (Dame Rachel Crowdy) because, to put the matter frankly, it was at the outset regarded as the least important division of the Secretariat. In 1930 the Committee of Thirteen recommended that:

Those who are responsible for sections should be given the title and powers of director, while the title of chief of section should be reserved for officials who work under the supervision of an Under-Secretary or director. As a result there would be only two or three chiefs of section.<sup>87</sup>

Although the Eleventh Assembly, on the advice of its Fourth Committee, disregarded this recommendation to

<sup>87</sup> League Document A. 16. 1930, p. 18.

the extent of continuing the power of the Secretary-General to appoint chiefs of section as section executives, it is probable that the post will become increasingly rare. This seems the more likely because of the decision of the Eleventh Assembly, on the advice of the Committee of Thirteen, to create in the Secretariat a few honorary posts of "counsellors" which are awarded to members of section "for exceptional merit," and which make the holders of these posts scarcely distinguishable from chiefs of section working under the supervision of a director. Even for the League Secretariat it is too anomalous to call the subordinate to a director a "chief" of section. The only logical place for the latter grade of official is in charge of subdivisions of Internal Administration, and as heads of the small temporary sections which are occasionally created to handle such specific and impermanent tasks as the settlement of Russian refugees. In consequence, the old title of chief of section is being replaced by the designation of chief of service.

#### MEMBERS OF SECTION

After the directors and chiefs of service, the members of section constitute the next grade of Secretariat workers. This class, numbering 120 persons, six of them women, during 1932, is the real backbone of the international civil service.<sup>38</sup> More often than might be expected, members of section play a leading if unacknowledged role in the formulation or direction of policy, and upon their labors always depends the translation of policy into effective action. The following tabulation shows the division of members of section between the

<sup>38</sup> The figures include five members of section recently promoted to the grade of counsellor, since this change of title involves neither a change of duties nor an increase in compensation.

various departments of the League's civil service during 1932:

Chief Executive Offices <sup>39</sup>	8
International Administrative Services	5
Administrative Commissions and Minorities Section	7
Communications and Transit Section	5
Disarmament Section <sup>40</sup>	4
Economic Relations Section	4
Financial Section, including Economic Intelligence Service	16
Health Section <sup>41</sup>	16
International Bureaus and Intellectual Co-operation Section	4
Mandates Section <sup>42</sup>	4
Opium and Social Questions Section	9
Legal Section	9
Information Section <sup>43</sup>	21
Political Section	7
Latin American Liaison Bureau	1
Total	120

The number of members of section in the respective departments gives an indication not merely of the amount of work done by these departments, but also of their relative importance in League policy. It should be remembered, however, that the Information and Legal Sections, each serving the entire Secretariat, are in a different category from the executive divisions.

<sup>39</sup> Offices of Secretary-General, Deputy Secretary-General, and three Under Secretaries-General.

<sup>40</sup> Not including the three professional officers who serve as secretaries for the military, naval, and air sub-commissions of the Permanent Advisory Commission.

<sup>41</sup> Including eight medical officers of this grade attached to the Epidemiological Intelligence Service and paid from Rockefeller grants.

<sup>42</sup> Including the secretary of the Central Opium Board, stationed permanently in the Secretariat with the grade of member of section.

<sup>43</sup> Including the officer in charge of the League's London office, who is classified as a member of section.

Until the report of the Committee of Thirteen was acted upon by the Eleventh Assembly members of section were divided into "A" and "B" categories, which since the end of 1930 have been abolished. The same Assembly decided, also on the recommendation of the Committee of Thirteen, that a number of important posts in the internal administration of the League such as those of interpreters, translators, and *précis*-writers should gradually be "assimilated" to the grade of member of section. This development, the more logical since the various branches of internal administration have now been grouped in a single Secretariat section, will in due time add about fifty persons to that grade. Past expansion indicates that the League may be expected to add at least five new members of section—aside from replacements—to its permanent staff each year.

Consideration of credentials and personal interview before an examining board are generally prerequisite to an appointment as member of section, with the unwritten proviso that certain nationals are *ipso facto* debarred from certain posts. For instance, British, French, Belgians, and Japanese, being citizens of mandatory Powers, are never appointed as members of the Mandates Section. Against this may be placed the tacit rule that nationals of all the Great Powers shall be included among the members of the Political Section. In the past the chances have been very much against the promotion of a member of section to the grade of director or even chief of section, as political considerations have weighed strongly in these appointments. Since the investigations and report of the Committee of Thirteen this situation has been much improved. Although the majority of this committee agreed that "it is of great importance that every official in the Secretariat should have the opportunity of reaching the highest posts, not excluding that of the Secretary-

General,"<sup>44</sup> it remains almost impossible for a director of section to aspire to an Under-Secretaryship, except in the event that the nationality allotted to the latter happens to correspond with that of the eligible director.

The roster of the "first division" in the Secretariat is completed by the chiefs of service in the internal administration, and by the interpreters and translators. At the top of the "second division" come the secretaries of section, who are for the most part extremely competent young women, registered in the "Intermediate Class—First Category." In this grouping are also workers of the type of chief clerks, assistant librarians, and specially skilled statisticians and accountants. Here also are found accepted career applicants of relatively little international experience who, after a period of training, will readily graduate into the class of members of section. Experienced secretaries of section are naturally very valuable in that post and, once arrived at this position, tend to stay there. It remains to be noted that all officials of the League, excepting only the Secretary-General, are considered as on probation during the first year of their service.

In lower categories of the intermediate class come the various private secretaries, followed by stenographers, typists, and clerical assistants of all varieties. The list is closed by the considerable staff of messengers, porters, *huissiers*, and other "third division" employees who are recruited locally and without any form of civil service examination. A real and interesting loyalty to League ideals is often found among these unskilled employees. There is also sometimes an appreciation of other factors than the dignity of the position. Employees of the League are non-suable in the Swiss courts and there have

<sup>44</sup> Because of differences between the majority and minority of the Committee of Thirteen this part of the report was not approved by the Eleventh Assembly.

been cases where exceedingly minor members of the staff have relied upon this to the detriment of Genevese stores too free with granting credit. The solution is reminiscent of that found by Edward I for the papal bull *de clericis laicos*, at a time when nationalism instead of internationalism was in the ascendance. Once dismissed from the League payroll the transgressor finds Swiss law entirely effective.

#### SALARIES AND PERQUISITES

The very important consideration of the morale of the Secretariat can best be prefaced by a table showing the salaries paid in the various administrative grades:

The salaries of the Deputy Secretary-General and of the Under-Secretaries were fixed on a pound sterling basis during the early period of organization in London, and have since been only slightly altered to bring them to round figures in Swiss francs. Those of the other grades were revised after the presentation of the first *Report on the Organization of the Secretariat*, completed in May 1921. The salaries proposed by this report, generally a little higher than eventually fixed as in the following table, were based on remuneration for similar grades of work in the British civil service. Broadly speaking, they are entirely adequate for reasonably comfortable life in Geneva. During the 1931 Assembly various salaries not protected by contractual obligations were somewhat reduced and it was decided that in future staff contracts a clause shall be embodied permitting remuneration to be varied by decision of the Assembly.

Although establishment of a pension system for the permanent officials had been contemplated since the formation of the League, and had been repeatedly urged by successive Assemblies, the development was not actually launched until the Eleventh Assembly, as a result of the report of the Committee of Thirteen. Most of the delay

LEAGUE SALARY SCALE, 1932  
(In Swiss francs <sup>a</sup>)

Position	Annual Salary			Appointment	Remarks
	Minimum	Increment	Maximum		
1) Secretary-General <sup>b</sup> . . . . .	100,000	—	100,000	Indeterminate	Entertainment and house allowance totalling 88,000 Swiss francs per annum
2) Deputy Secretary-General	75,000	—	75,000	Three years, ordinarily non-renewable	Entertainment allowance of 25,000 francs per annum
3) Under-Secretary-General.	75,000	—	75,000	As under (2)	Entertainment allowance of 12,500 francs per annum
4) Director of Section. . . . .	41,000	2,500	53,000	Seven years, ordinarily non-renewable	No entertainment allowance <sup>c</sup>
5) Chief of Service. . . . .	28,000	1,000	33,000	Indeterminate contract	As under (4)
6) Member of Section. . . . .	12,000	800	28,000	As under (5)	No entertainment allowance; <sup>c</sup> obligatory provident fund <sup>d</sup>
7) Intermediate Class. . . . .	10,000	500	16,250	Seven years, renewable up to retirement age	As under (6)
8) Private Secretary. . . . .	10,000	400	14,400	Individual contract	As under (6)

<sup>a</sup> At normal exchange \$1.00 = 5.18 Swiss francs.

<sup>b</sup> Up to the present the Secretary-General has been paid in English currency (£4,000 per annum). He has thus suffered a loss on exchange since Great Britain went off the gold standard.

<sup>c</sup> The director of the Information Service is given an entertainment allowance of 600 francs monthly. Other directors and officials down to and including members of section are entitled to refund for approved entertainment expenditure.

<sup>d</sup> Compare p. 289 below.



can be attributed to the drastic economy habitually insisted upon by a minority of the Assembly's Fourth Committee, which in effect has final authority over the budget. It was this committee which was responsible for keeping in effect, until 1929, the practise of docking Secretariat members a small percentage of their salaries to correspond with trivial decreases in the cost of living index at Geneva. The complicated accounting involved in this petty procedure must have absorbed the greater part of the maximum of \$30,000 a year saved the League thereby.

It is frequently charged in the Secretariat that the parsimony shown in the Fourth Committee is not inspired by any real desire for economy, but by a covert fear on the part of certain member States that the League may establish itself so strongly as to become a force of unwelcome potency in the conduct of international relations. Budgetary figures are frequently cited to substantiate this charge. The entire League budget, shared among fifty-five member States, amounted in 1932 to 33,687,994 gold francs,<sup>45</sup> approximately \$6,500,000, which is less than half the building cost of a single modern cruiser. Of this total less than one-fifth (6,468,237 gold francs) was attributed to the salaries, wages, and allowances of the entire Secretariat, including house staff.<sup>46</sup> Moreover, above 10 per cent of the 1932 budget—the sum of 3,500,000 francs—was allocated to the expenses of the International Disarmament Conference. Divided among the fifty-five member States the cost of the Secretariat to even the heaviest contributors becomes a trivial sum.<sup>47</sup> It is to be remembered, however, that League salary scales

<sup>45</sup> Including the budget of the International Labor Organization and that of the Permanent Court of International Justice.

<sup>46</sup> For details see "Budget for the Fourteenth Financial Period," *Official Journal*, October 1931.

<sup>47</sup> Compare Charles Howard-Ellis, *The Origin, Structure and Working of the League of Nations*, pp. 442-45.

appear luxurious by comparison with the remuneration of civil servants in many countries. This contrast encourages not merely jealousy of the Secretariat in these national administrations, but also a constant tendency to prune down Secretariat expenses regardless of whether or not such economies are *per se* desirable.

The pension system which finally came into effect on January 1, 1931 was largely responsible for a three million franc increase in the League budget for 1931 over that of 1930. But this meant a maximum additional contribution from the British Empire (excluding the dominions and India) of only about \$60,000; from Switzerland, whose representatives are often rather captious concerning the cost of the League, of less than \$12,000; and from Salvador, as a representative of those countries whose contributory scale is a single unit, of less than \$600. Also significant is the fact that the pension scheme was eventually legalized at a time of worldwide economic depression and national budgetary stringency, after having been several times postponed in more prosperous years. Partly this can be attributed to Secretariat resignations which might have been averted if pensions had been established earlier, but mostly to the fact that by 1930 the steady development, and therefore steadily increasing cost of the League, had been accepted as inevitable even by governments of member States still somewhat dubious as to the desirability of its work for international integration.<sup>48</sup>

For full details of the "Staff Pensions Regulations" drawn up by the Committee of Thirteen and approved by the Eleventh Assembly, reference should be made to the appropriate official document.<sup>49</sup> In essentials, the system provides retirement allowances up to 50 per cent

<sup>48</sup> The annual budgets of the League have increased from 20,873,945 gold francs in 1922 to 33,687,994 gold francs in 1932.

<sup>49</sup> League Document A. 25(1). 1930. X.

of final salary for all officials employed at least seven years who have reached the superannuation age of sixty, or, alternatively, served the League (including Labor Office and World Court Registry) for twenty-five years. There are also invalidity pensions, and pensions for surviving consort and dependent children of officials who die in service. For 1931 and 1932 the League contribution to the pensions fund was fixed at 9 per cent of salaries of eligible officials, these contributing from 5 to 6.5 per cent of their salaries according to their grade.<sup>50</sup>

Under Article 7 (4) of the Covenant it is provided that "officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities." This arrangement was implemented by the Swiss government when the Seat of the League was established at Geneva, though its scope was not definitely settled until the conclusion of a special *modus vivendi* between the Swiss Federal Council and the Secretary-General in 1926. On the judicial side it gives Secretariat officials the same immunity from Swiss civil and criminal jurisdiction as is accorded members of the Diplomatic Corps at Berne. On the economic side the agreement relieves all officials of the Secretariat from Swiss taxation on their salaries and allowances, while those above the grade of member of section may in addition import duty-free anything for personal use. This dispensation is broadly interpreted. The treatment of the Secretariat as extra-territorial personnel is

<sup>50</sup> Prior to the establishment of the pension system a "provident fund," including death and total disability allowances, was obligatory for permanent officials under the grade of chief of section. This fund takes the form of a pool, to which the employee contributes 5 per cent of his or her salary, the League contributing an equal sum from the general budget. The money accumulates at the current interest rate of trust-fund investments and is received by the official on the termination of his engagement. The maximum sum of which a member of section may have anticipation after twenty-one years' operation of this fund is approximately \$15,000. While choice of either is permitted it is probable that all members of the provident fund will transfer to the new, and more generous, pensions system.

one of the evidences that the League has acquired certain characteristics of statehood.<sup>51</sup>

The annual leave granted to members of the Secretariat is also generous. Up to the grade of private secretary the term is twenty-eight working days; for that grade and above, thirty-six working days. This period excludes the time required in travelling to and from the home country of the employee, a journey for which first-class transportation is allowed, but on which no expenses are paid in respect of an official's family. Non-European officials, however, must let their annual leave accumulate for two years before expenses are paid to Egypt, Asia Minor, or Eastern North America, and for three years before proceeding on vacation to localities more distant from Geneva. For journeys on official League business, first-class transportation is provided, together with an ample daily subsistence allowance (37.50 Swiss francs—about \$7.25—in the case of a member of section). Sick-leave allowances, under proper precautions, appear to be based on an exceedingly pessimistic opinion of Geneva's winter climate.<sup>52</sup>

These various prerogatives of Secretariat office, supplementing a secure remuneration which insures comfortable living to those entirely dependent on their salaries, are not all that is attractive in the lot of a League official. There are the natural pleasures of life in the charming city of Geneva and the incomparable countryside around. There is the not inconsiderable prestige, higher outside Geneva than in it, which accompanies a Secretariat post. And above all there is the unmeasurable factor, varying

<sup>51</sup> Compare Schücking and Wehberg, pp. 383-88; also Sir Cecil Hurst, "Diplomatic Immunities," *British Yearbook of International Law*, 1929. The text of the *modus vivendi* referred to is found in League Document C. 555. 1926. V, as amended in 1928, C. 188. 1928. V. Compare also pp. 222-23 above.

<sup>52</sup> Compare *Staff Regulations*, Articles 31-41. Travelling allowances were somewhat higher prior to the Assembly of 1931, which reduced them on recommendation of the Supervisory Commission.

according to the individual, of the spiritual stimulus attaching to work which, in the last analysis, combines the idealistic and the practically constructive as effectively as that offered by any other organization in the world. Nevertheless, there is a surprising amount of individual dissatisfaction in the Secretariat and some downright discontent. It finds its ultimate expression in the resignations which, while not actually numerous, are nevertheless sufficiently frequent to merit investigation.

#### MALAISE IN THE SECRETARIAT

Some members of the Secretariat, after acquiring invaluable knowledge and experience after a few years' work within the League, are drawn away by commercial offers with which no governmental organization can ever hope to compete. Some are too individualistic to sink themselves happily in a bureaucracy which is destined to become increasingly more anonymous, and where the rules against public expression of opinion are necessarily rigorous.<sup>58</sup> Others are unhappy because of the inevitable consequences of expatriation, because the appeal of the work has vanished with its novelty, or because of other personal factors which the League could not or should not attempt to remedy. But when these causes are all written off there still remain grounds for reasonable criticism. They can be summed up by saying that the Secretariat is by no means free from political intrigue; not merely the petty intrigue to be expected in any human organization, but a much more insidious influence directed from the outside.

A concrete cause of dissatisfaction is the issue of promotion. A competent man who enters at the minimum salary of member of section can advance by small annual increments spread over fifteen years or so to the maxi-

<sup>58</sup> Compare *Staff Regulations*, Annex IV.

mun salary of member of section.<sup>54</sup> His financial compensation in this period will double, but after the first few years the content and nature of his work will alter only as additional duties are placed upon him by the expansion of the League. During the League's first decade its organic growth was so tremendous that the theoretical stereotyping of function for the average Secretariat worker was largely concealed. It may well be that the time will never come when the League will have ceased to grow and therefore to be a constant source of stimulation to all grades in its civil service. But this does not answer the charge that office organization is unhealthy when the stimulus of work comes wholly from the acceptance of additional duties in the same grade, opportunities for advancement to executive position being negligible. With a few hopeful exceptions it has so far generally proved true that once a member of section means always a member of section.

While the year 1930, during which the Committee of Thirteen conducted its careful inquiries, initiated an unquestionable improvement in the situation as regards promotions, it brought no settlement of the problem of the Under-Secretaries, where appointment still rests on a national rather than a service basis. The fact that members of sections are permanent appointees, while directors and Under-Secretaries have only temporary contracts, is a clear indication of the line of demarcation in the promotion issue. To make a member of section a director is, paradoxically, to reward him by making his permanent position a temporary one. Nor was the problem of nationality, lying behind that of promotion, in any way solved by a contradictory resolution of the Twelfth Assembly, which vainly sought to meet all viewpoints by declaring that the Assembly:

<sup>54</sup> The report of the Committee of Thirteen as approved by the Eleventh Assembly, fixed the minimum age for appointment at twenty-three, and the maximum at thirty-five, subject to special exceptions.

Is of opinion that, in regard to the appointment or promotion of officials to one of the higher posts in the Secretariat, the first and foremost consideration must be the knowledge and capacity of the candidate, which must be in keeping with the duties he will be called upon to fulfil, account being taken, however, in such choice of the different forms of national civilization.<sup>55</sup>

#### THE NATIONALITY ISSUE

It is instructive to realize that the problem of nationality in the Secretariat roots in its international character. To be more specific, the entrance of Germany into the League made the organization as a whole much more international. Yet in the Secretariat it emphasized nationality by forcing German officials into the personnel, regardless of actual requirements. The same difficulty might well be experienced should the United States join the League. For above all it is the real or fancied necessity of placating the Great Powers by giving them strong representation which underlies the problem of nationality in the Secretariat. No satisfactory solution is found in the Great Power internationalism which has largely displaced the fine criterion demanded by Lord (then Mr.) Balfour in presenting the first report to the League Council on the staff of its Secretariat. During the fifth Council session, held at Rome in May 1920, he said:

Evidently, no one nation or group of nations ought to have a monopoly in providing the material for this international institution. I emphasize the word "international" because the members of the Secretariat once appointed are no longer the servants of the country of which they are citizens, but become for the time being the servants only of the League of Nations. Their duties are not national but international.<sup>56</sup>

This statement of principle is merely a translation to the international sphere of the tradition of political neutrality which has been fundamental to the repute of the

<sup>55</sup> *Official Journal*, S. S. No. 92, October 1931, p. 30.

<sup>56</sup> *Procès Verbal*, fifth Council session, p. 231.

British civil service. And, since national feeling is generally stronger than party feeling, it is even more important for an international civil service to be free from national bias than it is for the parallel national organization to avoid partisan leanings. From the outset none dared to criticize the principle openly, and it was early written into the first paragraph of the first article of the Secretariat *Staff Regulations* as follows:

The officials of the Secretariat of the League of Nations are international officials, responsible in the execution of their duties to the Secretary-General alone. They may not seek or receive instructions from any other authority.

Even this wording, which seems sufficiently specific, was not regarded by the Committee of Thirteen as adequate to the situation existing in 1930. The above paragraph, it considered, "should be emphasized and amplified."<sup>57</sup> Accordingly it proposed, and the Eleventh Assembly on October 3, 1930, adopted, the following amended form for the opening paragraph of the *Staff Regulations*:

The officials of the Secretariat of the League of Nations are exclusively international officials, and their duties are not national, but international. By accepting appointment, they pledge themselves to discharge their functions and to regulate their conduct with the interests of the League alone in view. They are subject to the authority of the Secretary-General, and are responsible to him in the exercise of their functions, as provided in these regulations. They may not seek or receive instructions from any government or other authority external to the Secretariat of the League of Nations.<sup>58</sup>

This regulation, moreover, was strengthened by the action of the Eleventh Assembly in requiring every Secretariat official, before entering upon his duties, to sign

<sup>57</sup> League Document A. 16. 1930, p. 10.

<sup>58</sup> The same. See also League Document A. 86. 1930. X, pp. 2-3.



the following declaration, known at Geneva as the oath of loyalty to the League:

I solemnly engage to exercise, in conformity with the first article of the *Staff Regulations*, and with complete loyalty, discretion and conscientiousness, the functions which have been intrusted to me in my capacity of an official of the Secretariat of the League of Nations.<sup>59</sup>

The principle of internationality in appointments could, of course, be carried to a point where it would clearly be a *reductio ad absurdum*. Nobody, for instance, would expect the Secretariat to survey the field in Chile or New Zealand before appointing its charwomen or other members of a household staff which is properly and economically recruited in Geneva. Similarly, since the official languages of the League are English and French, it is entirely logical and appropriate that Secretariat members concerned with the non-political duties of translating, interpreting, editing, and general clerical work should be either French- or English-speaking. In the lower administrative grades, however, one expects a beginning of the principle of an uncompromising mixture of nationalities. Up to and including members of section this expectation is fulfilled, most strikingly so in the latter important grade, as is shown by the table on page 296.

In addition to the nationality division among members of section this table gives the unit allocation by which the contributions of various member States to the League's budget were determined for the period 1926-32.<sup>60</sup> It will be noted from the figures that in proportion to their contribution to the budget none of the Great Powers (excepting the United States and Russia) are over-represented in the grade of member of section, while

<sup>59</sup> *Staff Regulations*, Article 3.

<sup>60</sup> This allocation is determined by a special committee which is authorized to establish a final scale as soon as world economic conditions are sufficiently stabilized.

NATIONAL APPORTIONMENT, 1932  
(By members of section and budgetary contributions)

State	Members of Section	Unit Contri- bution	State	Members of Section	Unit Contri- bution
British Empire . . .	12	105	Irish Free State	1	10
Germany . . . . .	9	79	Lithuania . . . . .	1	4
France . . . . .	8	79	Luxemburg . . . . .	1	1
Italy . . . . .	7	60	Panama . . . . .	1	1
Poland . . . . .	6	32	Persia . . . . .	1	5
Switzerland . . . .	6	17	Portugal . . . . .	1	6
Netherlands . . . .	5	23	Russia . . . . .	1	(non- member)
Belgium . . . . .	4	18	Siam . . . . .	1	9
Czechoslovakia . . .	4	29	Uruguay . . . . .	1	7
Sweden . . . . .	4	18	Venezuela . . . . .	1	5
United States . . . .	4	(non- member)	Abyssinia . . . . .	—	2
Austria . . . . .	3	8	Albania . . . . .	—	1
Canada . . . . .	3	35	Argentina * . . . .	—	29
China . . . . .	3	46	Bolivia . . . . .	—	4
Denmark . . . . .	3	12	Dominican Republic . . . . .	—	1
India . . . . .	3	56	Estonia . . . . .	—	3
Japan . . . . .	3	60	Guatamala . . . . .	—	1
Jugoslavia . . . . .	3	20	Haiti . . . . .	—	1
Spain . . . . .	3	40	Honduras . . . . .	—	1
Australia . . . . .	2	27	Latvia . . . . .	—	3
Finland . . . . .	2	10	Liberia . . . . .	—	1
Hungary . . . . .	2	8	Mexico * . . . . .	—	14
New Zealand . . . .	2	10	Nicaragua . . . . .	—	1
Norway . . . . .	2	9	Paraguay . . . . .	—	1
Roumania . . . . .	2	22	Peru * . . . . .	—	9
Bulgaria . . . . .	1	5	Salvador . . . . .	—	1
Chile . . . . .	1	14	South Africa * . . .	—	15
Colombia . . . . .	1	6			
Cuba . . . . .	1	9			
Greece . . . . .	1	7	57 States . . . . .	120	1,002

\* The absence of representation from Argentina is natural, in view of the anomalous relationship with the League maintained by that country, which up to 1931 co-operated in scarcely any League activities although counted as a member State. In the case of South Africa it should be noted that while it provided no members of section in 1932, the important post of League treasurer was held by a national of that country. Peru was in 1932 a member of the Council, and Mexico did not join the League until September 1931. The other States without representation among the members of section make only insignificant contributions to the League budget.

Japan is definitely under-represented. On the other hand, a number of the smaller Powers—Poland, Switzerland, Netherlands, Belgium, Sweden, Austria, Denmark, Hungary, Norway—have stronger representation than is mathematically appropriate in view of the proportion of their budgetary contribution. It is only in the higher executive offices that there sets in an open derogation from the ideal of selection by competence, regardless of national affiliation. In itself this suggests a functional line of demarcation.

#### MONOPOLY OF THE GREAT POWERS

In the higher executive offices, however, the Great Powers are unquestionably over-represented. The distance which has been travelled in this direction during the League's first decade is indicated by the fact that at the Peace Conference the original nominee for head of the Secretariat was Eleutherios Venizelos, the war-time premier of Greece.<sup>61</sup> While the work of Sir Eric Drummond, who was finally chosen for the post, commands unqualified respect and admiration from every student of the League, his great success cannot conceal recollection that the representative of a small Power was at first thought not merely eligible but desirable as Secretary-General.

On January 25, 1932, at the opening meeting of the sixty-sixth Council session, Sir Eric Drummond announced his intention to resign his post as Secretary-General early in 1933. That step, though universally regretted, may be expected to lead to important readjustments in the upper ranks of the Secretariat. It was with the situation which would be created by the retirement of the first Secretary-General in mind that the Twelfth Assembly provided that his Deputy and the

<sup>61</sup> Compare Howard-Ellis, p. 163, footnote. See also pp. 27-28 above.

three Under-Secretaries could be replaced within a year of the assumption of office by Drummond's successor.<sup>62</sup> Should the second Secretary-General be chosen from the ranks of the small Powers it is quite likely that the problem of his immediate subordinates will be amicably adjusted. But if the successor to Sir Eric Drummond is the national of a Great Power, unless he should be a man whose repute and record make him immune even from unjust criticism of favoritism to his country, the dispute over the Deputy and Under-Secretaries will continue, and be inflamed. This is implicit in the broad powers, actual and potential, which attach to the office of Secretary-General, and which will be examined in the following chapter.

Among the immediate aids to the Secretary-General the stereotyping of national composition has been pronounced. At the time of publication, the Deputy Secretary-General is a Frenchman,<sup>63</sup> the three Under-Secretaries respectively Italian, Japanese, and German. Moreover, effort has been made to establish a proprietary interest by these nations in these posts. When Dr. Dionizo Anzilotti resigned his position as Under-Secretary, on his election to the World Court in 1921, the Fourth Committee of the Assembly voted to suppress the vacated post as superfluous. There is probably some truth in Señor de Madariaga's charge that the vote was reversed "in order to insure a high post for Italy."<sup>64</sup> Certainly it is true that three Italians have filled this under-secretaryship successively. In 1927 there were ingenious shufflings of the chief executive posts among the five most powerful members of the League. But *plus ça change, plus c'est*

<sup>62</sup> It would be entirely appropriate for the Deputy to be this successor.

<sup>63</sup> It is a curious coincidence that the first director of the International Labor Office was French and his deputy British, thus exactly balancing (as between these two nations) the situation in the Secretariat of the League.

<sup>64</sup> In an article in the *London Times*, Sept. 5, 1928.

*la même chose*, as long as the particular strategic posts are controlled by the particularly powerful nations.

The inner circle of the Secretariat, in other words, has come to be regarded as a special preserve for representatives of the same five nations (Great Britain, France, Italy, Japan, and Germany) which possess permanent seats on the League Council.<sup>65</sup> And this system, unlike the privileged position given by the Covenant to the Great Powers on the Council, has been established in the Secretariat without any formal mandate or authorization. Since the representation on the Council is national it can be called logical that the most powerful States should have permanent seats. But the members of the Secretariat being by formal definition "*international officials*" political opportunism remains the only defense for a development which is not even politically opportune. An analogy, perhaps not very far-fetched, may bring the point home. The chances are strong that the President of the United States will be chosen from one of five states in the Union. But American presidents have never been so short-sighted as to choose their entire cabinet from the same small circle of politically-influential commonwealths.

If the system of political appointments in the Secretariat stopped short with the Under-Secretaries it could be understood, as a reflection of the growth of executive function which will be examined in the following chapter. Unfortunately, it has found some footing in the grade of director, where administrative capacity should certainly be the only factor in selection. Because the office of Under Secretary-General was established partly

<sup>65</sup> This fact was strikingly emphasized by the resistance of the Italian and German representatives of the Committee of Thirteen to any encroachment on the Great Power monopoly. The Italian government's memorandum of August 14, 1930 asserted flatly that: "The advisability that States with world-wide interests be pledged to participate in all the complex activities of the League of Nations, and consequently its higher direction also, is obvious" (League Document A. 23. 1930, p. 19). See also p. 47 above.

as a political sinecure, two Under-Secretaries serve also as directors of section. The fact that these two must be political appointees has to some extent affected the standard for the entire grade. Of the twelve Secretariat sections seven were headed by representatives of the "Big Five" Powers during 1932. Two more were directed by nationals of Spain and Poland, the holders of the two "permanent non-permanent" Council seats. Only the Disarmament Section, under a Greek,<sup>66</sup> the Legal Section, under a Uruguayan, and the Social Questions Section, under a Swede, stood out as clear exceptions to the evidence that the nations which dominate the politics of the League also dominate its civil service. Furthermore, the exception of the Disarmament Section is subject to discount because Great Britain, France, and Italy each maintain a military secretary therein.

#### DIPLOMATIC APPOINTEES

Another factor affecting the morale of the Secretariat is the practise of certain governments in retaining a hold over their diplomatic officers who take positions with the international civil service. In the early days of the League most of the Secretariat appointees were drawn from non-official ranks in their home countries. But as replacements have occurred in the upper grades it has become almost the rule not merely to select men who are *persona grata* to their home governments, but also (when technical requirements do not prohibit) to draw them directly from the national foreign office or diplomatic service.<sup>67</sup> All the Under-Secretaries are now professional diplomats and in each case their home governments (Japanese,

<sup>66</sup> In July 1930 Erik Colban (Norway) was succeeded by A. Aghnides (Greece) as director of the Disarmament Section. The promotion of M. Aghnides, theretofore a member of section, is one indication that channels of advancement within the Secretariat are becoming more open for this grade.

<sup>67</sup> Compare *Records Ninth Assembly*, Fourth Committee, pp. 32 ff.

Italian, German) keep them on the active list, counting their duty with the Secretariat of the League of Nations as a national service from which they will return (presumably, if they have incurred no displeasure in the national capital during their Secretariat term) to the higher grades to which the same period spent in an embassy of their own country would entitle them. Only casuistry can say that this situation is not contrary to the spirit, if not to the letter, of the first sentence of the *Staff Regulations*, as amended in 1930: "The officials of the Secretariat of the League of Nations are exclusively international officials, and their duties are not national, but international." It is always something of a shock to note the Fascist badge displayed in the button-holes of Italians on the Secretariat. But it may be argued that these disciples of Mussolini are only exhibiting openly a national allegiance which others feel as deeply.

So it is not surprising that among the members of section, who do much of the heavy work of the Secretariat without bothering about their record in the *dossiers* of their national governments, the influence of politics has given rise to dissatisfaction. A situation has been created in which the international civil servant, making the League his life-work, finds that neither outstanding ability, nor strenuous effort, nor faithful service, will insure promotion beyond a subordinate level. Filling the positions to which he may theoretically aspire, are transient officials who are for the most part the political appointees of the "Big Five" governments. After a period in Geneva these diplomats will be moved up to attractive posts in their national services, while the members of section remain to train and develop their successors, sent out as Under-Secretaries and even to some extent as directors of section. No wonder that some of the younger members of the Secretariat possessing real executive ability have resigned, and that much of the

original enthusiasm has worn thin among many of those who remain.

#### THE DEFECTS MAINLY SUPERFICIAL

Except for the disheartening effect on junior members of the Secretariat the intrusion of politics may easily be made to appear a worse evil than is actually the case. A majority—not all—of the political appointees have proved themselves well fitted for their posts, extremely conscientious workers, able and willing to disregard the invisible string which ties them to their national capitals. Moreover, much of what is really pernicious in the situation would in time be altered if it were made an established rule that all directors of sections must be recruited from the ranks of members of section, and if the directors of section were in consequence made permanent appointees. In view of subsequent developments it is ironic to recall that the chief reason for limiting the term of engagements for the higher officials was that:

The international character of the League of Nations, and the legitimate desire of the member States to take a full part in its working, render it essential that systematic changes should take place in the higher posts of the Secretariat in order to enable them to be filled by persons, of whatever country, who are of recognized importance and widespread influence among their own people, and whose views and sentiments are representative of their national public opinion.<sup>68</sup>

To what extent the difficulties of the Secretariat are due to the meager budget on which it is maintained, is difficult to say. While nationalistic intrigues and politics form the really serious problems of the Secretariat, it is

<sup>68</sup> *Noblemaire Report* (League Document A. 3. 1921, p. 57). On the recommendation of this report, adopted by the Second Assembly, the original directors and chiefs of section were not made subject to the seven-year retirement rule. By the time of the Twelfth Assembly, however, only one of the directors appointed in 1919 was still with the League. In 1930 the Committee of Thirteen recommended, and the Assembly approved, permanency for all grades below that of director.



perhaps partly due to false economies that politics have come to play a part in the Secretariat sufficient to affect its morale and efficiency. The salaries are such as to be very attractive to men of mediocre abilities, or of the routine bureaucratic type. But the financial return is not unusually alluring to those who have either the attainments, the initiative, or the degree of specialization desirable among Secretariat members, unless they are drawn from countries where the standard of living for professional workers is unusually depressed. Consequently, the situation tacitly favors recruitment from the diplomatic services of governments which are willing to give their officials "detached to the League" assurances of aftercare, though it is not the diplomat but the specialist which the proper functions of the Secretariat demand. However, there are signs that the real improvement initiated during 1930, as a result of the report of the Committee of Thirteen, can be regarded as the opening of a more generous and more far-sighted policy of the League towards its Secretariat. In the words of Senhor de Vasconcellos, in presenting to the Eleventh Assembly as much of this report as could be agreed to by its Fourth Committee:

We do not claim to have devised the perfect and final organization of our institutions. This is only a stage in the work of consolidation, a step forward which we believe to be indispensable.<sup>69</sup>

Meantime, the Secretariat, in the face of all obstacles, discouragements, and handicaps, has in the brief space of its existence accomplished a work of international organization which stands out as unique in history. In the last analysis the necessary criticism of certain trends serves only to heighten the tribute which must be paid to the value of the accomplishment as a whole. Barring the class of political appointees and the small minority

<sup>69</sup> League Document A. 86. 1930, X, p. 12.

of misfits which is normal in any organization, the Secretariat as a whole is more highly specialized and more keenly interested in its work, than one would expect in a bureaucracy. Certainly no national civil service is more alert, intelligent, and competent for the handling of its assigned and unassigned tasks than is that mixture of over forty nationalities which composes the League Secretariat. If its natural spirit were less excellent, if its achievements were less remarkable, the difficulties which impede full efficiency would not be so strongly resented.

## CHAPTER IX

### THE EXECUTIVE FUNCTION IN THE SECRETARIAT

While the Secretariat, within the limits set by rigorous economy, has been improving its technique to cope with increasing responsibilities, its constitutional character has also been developing.

The change which has taken place is partly an accidental result of international political manœuvring. In part it is that type of evolution which follows the line of least resistance. But it is also a result of the carefully planned policy, donated to the League as its birthright from war-time international administrative experience, which has been outlined in Chapter VII of this study. From what was then said it is clear that the Secretariat is the essential balance-wheel of the whole complicated mechanism of continuous international consultation which the League has built up. Even if others than the Secretariat leaders had designed this mechanism these officials would certainly have played a leading part in its operation because of their central and permanent position. And the fact that the whole machinery is geared together and motivated by the Secretariat is the more natural because those who ran the mechanism during the League's first decade were also its designers, within the broad architectural plan laid down by the Covenant.

The subjects discussed in the pages immediately preceding have direct bearing on the constitutional evolution of the Secretariat as the central organ of the League. Indeed, the whole category of quasi-political officials, placed over and above the lower grades of non-political, permanent civil servants cannot be fairly criticized with-

out some parallel consideration of the way it fits into the functional development of the Secretariat as part of the general mechanism.

#### POLITICAL AND CAREER APPOINTMENTS

From the constitutional viewpoint the essential feature in the Secretariat's personnel problems is the subordination of the civil service proper to the grade of chief of section and below, and the creation over and above the civil service of a sort of cabinet of temporary political officers, as the Under-Secretaries must be considered.<sup>1</sup>

The directors of section fill a debatable middle ground. On the one hand there is the fact that the original appointees to this grade were non-political specialists, and the present growing insistence that vacant directorships should be filled by promotion from below. On the other hand there is the case of the two directors who are also Under-Secretaries and instances like that presented by the Administrative Commissions and Minorities Section. The Spanish director of this section resigned shortly after his country gave notice of withdrawal from the League. But the post was not filled, the section remaining without a titular head in spite of its importance, until Spain decided to remain a League member. It was then filled by another Spaniard, a high official in that country's foreign ministry. The incident is strong evidence that the position of director of section may be regarded as a political and not a career appointment. Both majority and minority of the Committee of Thirteen, moreover, were "unanimously of opinion that the principle of permanency should not apply to the directing officers of the Secretariat."<sup>2</sup>

<sup>1</sup> None of the original Under-Secretaries was a professional diplomat. In 1932 all three came from national diplomatic services.

<sup>2</sup> League Document A. 16. 1930, p. 11.

The development of the Secretariat into the two classes of career men and political appointees was of course foreshadowed when the term of office for Under-Secretaries and directors of section was originally established at seven years. But the constitutional consequences of the division have been much greater than anything that was then imagined. To repeat, the evolution of the Secretariat has combined the development of an international civil service with something approaching that of an international cabinet. Considerations of efficiency dominate in the permanent appointments of the former. Political considerations have tended to dominate in the temporary appointments of the latter. The results to which these political considerations may lead were painfully demonstrated during the Sino-Japanese difficulties of 1931-32. This protracted crisis found the Political Section of the Secretariat headed by an Under-Secretary who was then also a distinguished member of the Japanese diplomatic service. The fact that Mr. Sugimura himself has always been an objective and faithful international official did not obviate the mistrust and criticism naturally aroused by the unfortunate duality of his position.

The tendency of the Secretariat to develop a quasi-cabinet appearance in its upper grades has been greatly strengthened by the importance the Great Powers have come to attach to possession of these posts by their nationals, a feeling which, incidentally, is indicative of the growing prestige and importance of the League. But there is a totally different factor of at least equal importance in the constitutional trend. It is the personal power and influence of the Secretary-General.

#### EXTERNAL POWERS OF THE SECRETARY-GENERAL

This office has no parallel in any national civil service. Unfortunately, the degree of its authority is disguised by the utilization of the word "Secretary," which carries

a connotation of subordination completely misleading in this particular case. The title of "Chancellor" was first suggested for the executive head of the Secretariat, and in the interests of accuracy it would have been better if it had not been abandoned.<sup>3</sup> This nomenclature suggests an office which has very great power and responsibility, without the possession of absolute sovereignty. The Chancellor, as the preservation of the title for the Prime Minister of the German Empire indicated, was a medieval forerunner of the modern premier, responsible to the king but not to any electorate. That is, roughly, the position of the Secretary-General of the League. He is responsible to the Council and to the Assembly, but to nothing else except his own conscience and sense of what is politically opportune. Since the Council meets normally every four months, and the Assembly but once a year, and since both bodies are too heterogeneous and impermanent in personnel to exercise a close supervision over individuals, the Secretary-General may almost be said to hold a position analagous to a medieval chancellor under a king of fluctuating purpose, insistent on few subjects except as to the general undesirability of opening the privy purse.<sup>4</sup>

The duties which the Covenant assigns the Secretary-General as head of the League's permanent civil service have already been summarized.<sup>5</sup> But to appreciate the policy-making function of this official at full value it is necessary to consider again the wording of the first paragraphs of Article 11 and Article 15 respectively. Under Article 11 (1) the Secretary-General is instructed, in case of any threat to international peace, to summon a meeting of the Council "on the request of any member of

<sup>3</sup> See p. 48 above.

<sup>4</sup> It is to be remembered that while the Council has five permanent members, these members are governments, not individuals. The representation, or at least the policy, of each permanent member is likely to change with every change of administration at home.

<sup>5</sup> See pp. 264-67 above.

the League." Conceivably every State represented on the Council might be opposed to an emergency meeting of that body when a threat of war arises between nation X and nation Y. Under the interplay of international politics it might be in the interest of all the Great Powers that X be allowed to overwhelm Y. It can be imagined, for instance, that the European nations might not care to intervene should the United States determine to conquer Haiti. Yet on a request from Luxemburg in such a hypothetical case it would be the duty of the Secretary-General to call the Council together and at least air the whole situation before the watchful eyes of the world press.

Moreover, a strong Secretary-General who was personally convinced that the situation should be aired would find no difficulty in obtaining from one or other of the fifty-five League members a formal request that he call the Council in extraordinary session. The same procedure, of course, could theoretically be employed by Nicaragua, perhaps acting on an initiative from the Secretary-General, in order to bring a serious and intractable Franco-German dispute before the Council of the League. In other words, this article puts the Secretary-General at the controls of all established international machinery. He can, for instance, invoke the Pact of Paris more expeditiously, and with more certain immediate results than can the President of the United States; for the latter has no international machinery at his disposal. And the fact that the time is not yet ripe to put these controls into full operation is no proof that future Secretaries-General will always feel that to be the case.

Somewhat similarly, Article 15(1) authorizes the Secretary-General to set international investigations under way in disputes between League members "likely to lead to a rupture" and not otherwise submitted by the disputants to arbitration or judicial settlement. All that

is necessary to effect this action is that a party to the dispute invoke Article 15 by giving notice to the Secretary-General, a step which this official can legitimately advise a government to take if he believes that course desirable. The latent powers of the Secretary-General under this article are probably no less extensive than is the case under Article 11. And experience has shown that they are not merely theoretical. When Article 15 was invoked by China, immediately after the Japanese occupation of Shanghai, the Secretary-General on his own initiative formed a commission of inquiry in that Chinese city from diplomatic representatives of six Council members stationed there.<sup>6</sup> This step was taken during the sixty-sixth Council session and was immediately approved by that body in spite of objection raised by the Japanese representative thereon. But similar action under the Secretary-General's authority to "make all necessary arrangements for a full investigation" could with equal legality be taken by him between Council sessions, then presenting the Council with a *fait accompli* when it next convened.

It is apparent that the authority vested in the Secretary-General under Article 15 (1) may lead to very far-reaching results. In the case of the League's committee of investigation at Shanghai, for instance, an immediate consequence was a Council appropriation of five thousand dollars to cover initial costs, this sum being debited against the item of "unforeseen expenditure in the League budget, to which Japan is one of the largest contributors. Thus, on the initiative of the Secretary-General, a League member opposed to an international investigation of its military policy was induced to make an indirect contribution to the expenses of that investigation—an incident of unusual and striking import in the development of inter-State relations. Furthermore, as a result of the

<sup>6</sup> France, Germany, Great Britain, Italy, Norway, and Spain.



same action by the Secretary-General, the United States, while not a League member, was led to co-operate with the League committee at Shanghai, as made clear in the following extract from a statement by the Department of State on February 1, 1932:

The department has instructed the American Consul at Geneva to inform the Secretary-General of the League informally that the American government continues to be heartily sympathetic toward efforts which the League is making to preserve peace in the Far East, and will continue to extend its co-operation wherever this is possible, but that it is unable to appoint an American official on a committee of the League which will be acting under the provisions of one of the articles of the League Covenant.<sup>7</sup>

However, because of its desire that international peace be preserved, that its interests in the International Settlement and the life and property of its citizens may be protected, and to safeguard its treaty rights the government of the United States has a direct concern in the situation at Shanghai; and the American government is prepared to instruct an American representative at Shanghai to co-operate with such a commission as is contemplated in studying and reporting upon the recent incidents and the facts and causes of them.

#### POWERS WITH RESPECT TO LABOR ORGANIZATION

In addition to the policy-making powers attributed to the Secretary-General by the Covenant he is the possessor of broad responsibilities with respect to the International Labor Organization. Indeed, most of the statutory subordination of the Labor Organization to the League is concentrated in the special authority entrusted to the Secretary-General in this connection by Part XIII of the Treaty of Versailles.

<sup>7</sup> This assertion of inability is far from according with the facts. The United States government has frequently appointed officials on League committees "acting under the provisions of one of the articles of the League Covenant." One of many instances was the appointment of Ambassador Hugh Gibson to membership on the Preparatory Committee for the Disarmament Conference, acting under Article 8 of the Covenant.

Thus, Article 398 of this Treaty provides in extremely general language that "The International Labor Office [which is the Secretariat of the International Labor Organization] shall be entitled to the assistance of the Secretary-General of the League of Nations in any matter in which it can be given." The intimation, and the practice, is that the Secretary-General should himself decide when and in what ways this assistance should be given. Article 399 stipulates that expenses of the Office and of its conferences shall be paid to the Director (of the International Labor Office) by the Secretary-General, and that "the Director shall be responsible to the Secretary-General of the League for the proper expenditure of all moneys paid to him in pursuance of this article." Articles 405 and 406, in line with the principle of Article 18 of the Covenant, call for deposit with and registration by the Secretary-General of all conventions adopted by the General Conference of the Labor Organization.

Other articles giving the Secretary-General supervisory powers over the Labor Organization are of a more specifically personal character. In the event of a complaint of non-observance of a convention, which cannot be settled by the Labor Organization itself, the Secretary-General is empowered to nominate a commission of inquiry from a panel prepared by the Governing Body of the Labor Organization (Articles 409-12). This function has certain political characteristics and their attribution to the Secretary-General may be regarded as a recognition of the supreme political importance of his office in the League framework.<sup>8</sup> Finally, in the event that one or more governments concerned in the complaint refuse to accept the recommendations of the committee of inquiry, it is the Secretary-General who must be informed of this refusal (Article 415). In this event

<sup>8</sup> Compare Jean Ray, *Commentaire du Pacte de la Société des Nations*, p. 248.

the issue may be taken before the World Court, the decision of which is final (Articles 416-20).

#### INTERNAL POWERS OF THE SECRETARY-GENERAL

Within the League of Nations there is no other office which is even comparable with that of the Secretary-General so far as actual power goes. Theoretically, the President of the Council and the President of the Assembly might rival him, but national jealousies have resulted in making the former a mere chairmanship which changes at each Council session, while the latter is equally a temporary presiding officer nominally elected but really chosen in advance of each Assembly, largely on the recommendation of the Secretary-General himself.<sup>9</sup>

Among his own immediate entourage this official is set apart not merely as titular superior, but also as the possessor of an indeterminate engagement, compared with three-year terms for the Deputy Secretary-General and the Under Secretaries-General. Representatives on the Council and delegates to the Assembly change as their domestic governments change. The national spokesmen on League committees and commissions can be altered at the will of their respective capitals, whether expressed directly or discreetly conveyed to the Council. In case of serious misconduct any official of the Secretariat may be dismissed by the Secretary-General, subject only to a later appeal to the Council. But the Secretary-General himself is subject to neither recall, impeachment, nor dismissal. The *Staff Regulations* contain eighty articles, of which a good half specify the powers of the Secretary-General in all sorts and conditions of cases. None of them regulate his authority. He has, in theory at least, almost dictatorial powers. *Quis custodiat custos?* In the wrong hands, in a league which had firmly established super-national powers, the unlimited authority of the

<sup>9</sup> Compare p. 566 below.

Secretary-General might easily become a most tremendous problem.<sup>10</sup> He could, of course, be ousted by a unanimous vote of the Council, approved by the Assembly, but such a proceeding would probably shake the League to its foundations.

That the issue has as yet remained largely academic is due primarily to the retiring personality, the faultless tact, the shrewd judgment, and the admirable common-sense of Sir Eric Drummond, the League's first Secretary-General. With the authority to overrule his subordinates he has preferred to take counsel with them, frequently merging his own opinion in that which is the consensus of his advisers. But the power of the office of Secretary-General on the one hand and the co-operative spirit of its first incumbent on the other have combined in a curious way to forward the trend towards the exercise of executive authority by the Secretariat.

The weekly directors' meetings, when the various administrative chiefs take counsel together under the presidency of the Secretary-General, are not infrequently something more than informal discussions on the progress of work in the Secretariat. Confidential minutes are taken of these meetings and these show that policies are there discussed, and to some extent mapped out; policies which might have been of small moment when the League was in the fledgling stage, but which can scarcely be called such now that any major League decision may have repercussions around the entire globe. As we have seen, there was in 1930 a fairly strong movement to create a formal "Advisory Governing Board" of Under-Secretaries which "should have the right to give its opinion, if it so

<sup>10</sup> For a complete legal analysis of the "Special Rights and Duties of the Secretary-General," see Schücking and Wehberg, *Die Satzung des Völkerbundes*, pp. 356-60. The contrast between the complete responsibility of the Secretariat staff to the Secretary-General, and the absence of control over the latter, was commented upon in the Fourth Committee of the Eleventh Assembly, during consideration of the report of the Committee of Thirteen. Compare League Document A. 86. 1930. X, p. 3.

desired, before any measures involving important political issues or principles were taken by the Secretary-General." This proposal was defeated in the Fourth Committee of the Eleventh Assembly by a vote of thirty to five. But one of the reasons for its defeat was the fact that the weekly directors' meetings already possess much of the character of this desired governing board, only with the inclusion of directors as well as Under-Secretaries and without endangering the independent action of the Secretary-General in emergencies.

#### EXECUTIVE FUNCTION IS FORCED ON THE SECRETARIAT

Something of the executive authority developed in the upper levels of the Secretariat is an inevitable result of the mechanical structure of the League. The annual session of the Assembly lasts less than a month, and that organ has as yet only begun the creation of permanent standing committees. Aside from the period when the Assembly is also sitting the Council now normally holds but two sessions a year, lasting only a week apiece and with intervals of four months between them. Extraordinary sessions of the Council can only be expected in the event of the most serious crises, such as a definite threat or outbreak of armed hostilities. But with the rapid development of the League's scope and activities, there are an increasing number of issues on which there must be some direction of policy in the long intervals when neither Assembly nor Council is functioning.

The fact that the directorate of the Secretariat makes decisions of policy during these intervals, is often veiled by an *ex post facto* approval from the Council. Policies, moreover, are never openly initiated in the Secretariat, which would probably be sharply rebuffed by the Council or Assembly if it overstepped the line of discretion here. The fact that policies do not seem to originate in the

Secretariat, however, is far from meaning that the international civil service is lacking in policy-making power. And no amount of caution and forbearance on the part of the Secretary-General can keep him from playing a very active role in a semi-governmental scheme where there is no clearly defined executive and where the parliamentary arm is so weak and so little exercised.

In their uncertainty as to the ultimate implications of their work, and in their anxiety to avoid anything which savored of the creation of a super-State, the architects of the Covenant left not merely details, but also many problems of fundamental political theory, to be decided by the future. Nobody doubted that the League would exercise some executive authority, and as the most satisfactory compromise this power was vested in the Council. It could have rested there unchallenged under the fulfillment of either of two suppositions: (1) That the League would concern itself entirely with non-contentious business, in which case a Council composed of busy national executives could lend it all the requisite dignity, prestige, and color. (2) That the League would develop into a machinery of actual super-national government, in which case the Council would have to give its work at least the same full-time consideration as is devoted by the municipal authorities to the running of a city where the commission form of government applies.

Thirteen years after its inauguration the actual situation of the League is midway between the two. It is far more than a debating society, but still much less than a government. The Council, itself much altered from the original form, is therefore able to give the appearance of full executive authority. But the absence of any president, premier, cabinet, or other full-time executive creates a void in that part of the administrative structure which has become effectively international. Effort to fill this constitutional vacuum is an almost automatic

procedure, and the organ which can fill it most readily is the Secretariat, the only body for which the development of League policy is a full-time professional duty.

#### POLITICAL CONSEQUENCES OF TECHNICAL ACTIVITIES

It requires, moreover, no deep thought on the subject to realize that momentous consequences may ultimately spring from the fact that the members of Assembly and Council are for the most part extremely busy men, entirely aside from their responsibilities to Geneva, and that the international civil service is composed of highly trained officials who have no duties outside the operation of League machinery. Where the Secretariat is concerned with major political issues the politicians in Council and Assembly keep close watch on its activities. But on such technical matters as the development of a national public health service in China the opinion of both the deliberative bodies is likely to be vague, in spite of the growing importance of national technical advisers in Assembly and Council delegations and the development of special League bureaus within the various foreign offices. The advantage possessed by the specialist over the general practitioner in the modern world is an index to the advantage possessed by the permanent Secretariat over the kaleidoscopic Council and Assembly. And the importance of the Secretariat is heightened because, in a closely integrated modern civilization, it is always possible for a decision on technical policy, taken as a matter of course, to reveal momentous political consequences later.

This was strikingly illustrated when the outbreak of the Sino-Japanese dispute, in the autumn of 1931, found three high officials of the Secretariat in China, engaged in technical activities approved the preceding May by the Council.<sup>11</sup> None of these officials had left Geneva with

<sup>11</sup> *Official Journal*, July 1931, p. 1083.

any mandate to participate in any kind of political work. Dr. Louis Rajchman, the director of the Health Section in the Secretariat, was forwarding a plan of public health organization which he had helped to initiate in a previous visit to China in 1929. Mr. Robert Haas, director of the Transit and Communications Section, was advising on projects of road-building and river conservancy, as part of an extensive program of League assistance requested by the Nanking government for its newly established National Economic Council.<sup>12</sup> Mr. Frank Walters, the personal assistant to the Secretary-General (with rank of chief of section) was attached to a mission of prominent European educators sent to China under the auspices of the Institute of Intellectual Co-operation to further educational contacts and exchanges. The prior understanding regarding the nature of these activities was defined in the *Minutes* of the sixty-third session of the Council. Approving the general scheme of co-operation between the League and the Chinese government, the Japanese representative on the Council, Mr. Kenkichi Yoshizawa, noted that:

... The plan referred solely to work of a purely technical character, leaving aside all assistance of a political nature. It was in that way that the Secretary-General, in his suggestions, had interpreted all the Chinese proposals. The one and only aim of the plan was to assist in the development of the natural resources of the country and the well-being of the Chinese people without in any way affecting the general progress of the friendly and close relations existing between the members of the League in the Far East. . . .

With these observations, he was glad to express Japan's approval of the scheme submitted to the Council.<sup>13</sup>

On any literal interpretation of their mandate from the Council, therefore, political activities would seem to

<sup>12</sup> The same, p. 1173.

<sup>13</sup> The same, pp. 1082-83.



have been barred from the program of the Secretariat officials co-operating with the Chinese government. With the outbreak of the Sino-Japanese hostilities, however, Dr. Rajchman began to play a very energetic role looking towards the settlement of the dispute. This public health expert became a close adviser of the Chinese Minister of Finance, Mr. T. V. Soong, and through him exercised appreciable influence on the policy of the Nationalist government. The Japanese authorities were quick to observe, and resent, these political activities by one of the League's civil servants. Not without reason it was asked in Tokyo whether a thirty thousand dollar bill for radio messages from Shanghai to Geneva, said to have been contracted by Dr. Rajchman during early stages of the Manchurian controversy, was entirely concerned with the state of public health organization in China.<sup>14</sup> The quasi-diplomatic character assumed by these technical civil servants was further emphasized when Mr. Haas was appointed secretary of the committee of inquiry in Shanghai appointed over Japanese protest by the Secretary-General in accordance with Article 15(1) of the Covenant.

The background of the League's program of co-operation with the Nationalist government of China sheds further light on the question of the Secretariat's policy-making power. It was inaugurated during the Assembly session of 1928, almost immediately after China's failure to secure the right of re-eligibility in that year's election of non-permanent Council seats.<sup>15</sup> This, being interpreted by the new Nationalist government as a rebuff, led to reports that China would resign from the League, a development which the Russian government, to put the facts mildly, did nothing to discourage. Conferences between the Chinese delegates at Geneva and

<sup>14</sup> Compare *New York Times*, Nov. 9 and 10, 1931.

<sup>15</sup> See pp. 372-73 below.

the higher Secretariat officials then led to a visit to Nanking by M. Joseph Avenol, the Deputy Secretary-General; to the establishment of a permanent Chinese delegation at Geneva comparable in organization with the Japanese League of Nations office in Paris, and to the whole eventual program of organized co-operation between Geneva and Nanking. In this far-reaching development there was assuredly nothing improper. The point is that it was all planned in the Secretariat without any prior authorization from Assembly or Council, thereby indicating that the Secretariat possesses, and does not hesitate to use, the executive function of policy initiation to a degree which is not found in the normal national civil service.

Missions of a semi-diplomatic character by the higher Secretariat officials have been carried on since the establishment of the League, though their scope and extent has tended to increase in recent years. The Director of the International Labor Office toured the Far East in 1928, going out via Russia and Siberia. The Deputy-Director of the International Labor Office paid an extended visit to the United States and Canada in 1930. During the winter of 1930-31 the Secretary-General made a lengthy trip to various Latin American countries. At the same time Sir Arthur Salter, the retiring director of the Economic and Financial Section, went on mission to India and China, returning via the United States.

All of these voyages were taken with the foreknowledge of the Council and the expenses involved were approved by the Assembly. But a wide discretion is naturally left to the officials and they often serve as envoys promoting a general co-operation from distant League members rather than as strictly technical advisers. Even in cases where the mission is primarily a matter for technicians a diplomatic aspect has been discernible. The non-controversial character of the work of the League's Health Organization, for example, has

enabled the Health Section of the Secretariat to use its technical officers as a spear-head for the promotion of international co-operation of a more political character.

#### OTHER TENDENCIES PROMOTING EXECUTIVE FUNCTION

Subjective as well as objective tendencies have throughout encouraged the growth of the executive function in the Secretariat. That is to say, the trend has been forwarded not merely by such unanticipated circumstances as the decision to reduce the annual number of Council sessions<sup>16</sup> but also by the character and experience of those who originally took the organization of the Secretariat into their own hands.

As has been pointed out, the Secretary-General's most important collaborators during this initial period were men who came to their task direct from the control of international administration as developed by the Allied governments as a war-time necessity. Men like Sir Arthur Salter, Jean Monnet, and Bernardo Attolico, who had together played a leading role in building the Allied Maritime Transport Council and the various conjoint program committees, were not likely to serve as ordinary bureaucrats when they were called upon to organize the Secretariat of the League of Nations. During the war they had been accustomed to executive authority and little or no interference from parliamentary organs in developing their essential work. In establishing the Secretariat their psychology was inevitably tinged by past experience and confirmed by the fact that here too they were free from any legislative control. Time was on the side of these early Secretariat builders, for it was a whole year after they began the work of organization in London before any account was rendered to the League Council, and another six months until the first session of the League Assembly was convened. When the first critical

<sup>16</sup> See pp. 400-04 below.

external examination was given to the early work of the Secretariat it had already acquired enduring characteristics, of which the most pronounced was inclination towards leadership in the planning and conduct of international administration.

It is significant that while the early sessions of the Assembly took note of, and resisted, the Secretariat's tendency to accept executive functions, the opposition to the trend has in later years diminished. The Assembly has been deeply concerned with establishing and strengthening its authority as the sovereign organ of the League. But it has seemed to wink at the vital constitutional development whereby the Secretariat has in large measure taken upon itself the responsibility of directing and interpreting the will of the parliamentary body.<sup>17</sup> This tacit approval is understandable because every assumption of executive power by the Secretariat involves an equivalent surrender on the part of the Council, and of these two organs the Secretariat can always more easily be brought under Assembly control, by budgetary limitation if by no other device. As will be shown in the appropriate setting, the Assembly has acted to limit directly the power of the Council. But it has also indirectly limited the power of the Council by permitting the Secretariat to assume functions which were originally regarded as the prerogative of the Council alone.

#### CHANGE IN ASSEMBLY ATTITUDE

When subjected to close scrutiny the change in the Assembly's attitude towards the executive function in the Secretariat is really startling. In 1921 the Noblemaire Committee saw clearly enough the way the tide was setting, and M. Noblemaire himself, with a reasoning some-

<sup>17</sup> The *Minutes* of Assembly committees reveal many observations similar to that of Senator Scialoja in 1922, defining the Secretariat as "in fact the executive organ for the deliberations of the Council and of the Assembly." Compare *Records Third Assembly*, First Committee, pp. 32-33.

what suggestive of that employed by the courtiers of King Canute, attacked the Secretariat for being "too intelligent" to remain humbly in the field indicated for it by the Covenant:

Indeed, the intellectual level of the staff seems almost too high, for its members tend perhaps to neglect the small details of their work. The Secretariat should take every care to avoid taking the initiative too often. It is not its duty to suggest the decisions which should be taken by the Council and the Assembly, but to prepare them and carry them out.<sup>18</sup>

And in the subsequent (1921) report to the Second Assembly on the organization of the Secretariat it was set down that:

The Secretariat, as such, has, of course, no executive power, except in so far as the general direction of its various branches is concerned. Its functions are confined, first, to the preparation of the necessary material, whether for the meetings of the Council or of the Assembly, or for those of the various technical committees, and secondly, to the promulgation of the decisions and recommendation made by those bodies. From these wise limitations of its activities the Secretariat has in no way deviated.<sup>19</sup>

This definition of nine years earlier no longer fitted the facts by the time of the report of the Committee of Thirteen to the Eleventh Assembly. Here is found the assertion, almost incredible in view of the actual quotation from the *Noblemaire Report* given directly above, that:

In the *Noblemaire Report*, the committee observed a definition of the role of the Secretariat as the executive organ of the League of Nations, responsible for preparing the work of the Assembly, of the Council and of the various committees, and for subsequently carrying their decisions into effect.<sup>20</sup>

<sup>18</sup> *Records Second Assembly*, Fourth Committee, p. 7. Compare Ray, p. 249. He makes the pertinent comment that: "We confess inability to understand how it is possible to prepare decisions without suggesting them."

<sup>19</sup> League Document A. 3. 1921, p. 48.

<sup>20</sup> League Document A. 16. 1930, p. 8.

In some quarters at Geneva there is a curious and suggestive unwillingness to admit the change in the constitutional character of the Secretariat which took place during the League's first decade. To this psychology may be attributed the deceptive attempt of the Committee of Thirteen to attribute to the *Noblemaire Report* of 1921 a definition exactly opposite to that actually then expressed. But the essential points are that during this decade the policy-making power of the Secretariat had steadily increased, and was no longer blindly opposed by the Assembly as had been the case in 1921. The new situation was well summarized, in conclusions which need fear no contradiction, in the minority statement by Count Bernstorff and M. Gallavresi attached to the report of the Committee of Thirteen, saying:

In practise, the work of the Secretariat today is quite different from what was anticipated in 1921. The division of work between the different capitals and Geneva has developed in such a way that the political character of the Secretariat's work has become much more accentuated than was thought likely. Not only does the execution of decisions taken by the various organs of the League constantly require interpretations and judgments of a political nature, but the preliminary work entrusted to it makes it an adviser in the various spheres of League work. We need only quote a few examples. The President of the Council for the time being, by virtue of several resolutions of the Assembly and the Council, is responsible for taking certain provisional measures in specific cases. It often happens that the office of president is held by a representative occupying a post far distant from his country, who, for that reason, is not in possession of all the information and material on which to frame a judgment, such as is, as a rule, to be found in the ministries for foreign affairs. In such cases it is the Secretary-General who gives his opinion, and does the preliminary work which enables the President to take the necessary action. Further the Secretary-General receives any requests and petitions which may be addressed to the League by States, associations or private persons. In these cases, there are always questions of interpretation or judgment as to the

procedure to be followed, and this, in actual fact, very frequently means dealing with certain points which have an important bearing on the final settlement. The political influence of the Secretariat, and especially of its principal officers, is, in fact, enormous and it would be a mistake to close our eyes to this fact.<sup>21</sup>

#### EPISODE OF THE NOTE TO COSTA RICA

While many instances of the tendency of the Secretariat to initiate policy could be cited, the part which it played in the correspondence with Costa Rica over the Monroe Doctrine, during the summer of 1928, is perhaps the best all-around example. The underlying issue was not one of extraordinary urgency, such as a threat of war, but was none the less of the very first importance, involving the triangular relationships of the League with Latin America, of the League with the United States, and of the United States with Latin America. It was a case in which the Secretariat took upon itself the task of interpreting, and thereby limiting, the scope of a highly controversial article in the Covenant. And by revealing a dependence of the Council on the Secretariat in a political matter, it gave indirect evidence of that still greater dependence which exists in technical matters. These various factors justify the exposition of an instance of constitutional development which, though somewhat involved in background, is thoroughly illustrative of the Secretariat's power to make far-reaching decisions.

Costa Rica, which has the dubious distinction of being the first League member to resign from that organization, presented its notice of withdrawal on January 1, 1925. It has been asserted that the resignation was due to Assembly pressure on delinquents, of which Costa Rica was then one of many, to pay up their arrears in League dues.<sup>22</sup> If this played any part in the episode it was

<sup>21</sup> The same, p. 29.

<sup>22</sup> Compare Charles Howard-Ellis, *The Origin, Structure and Working of the League of Nations*, p. 105.

probably that of a pretext. Costa Rican dissatisfaction with the League rested on a much broader basis, in which a very definite "entanglement" between the United States and the League is all too plainly discernible.

The independent, not to say anti-American, attitude of various Costa Rican governments has often been a minor irritation to the Department of State in Washington. This small, but relatively progressive, Central American republic has on several occasions shown complete indifference to the Monroe Doctrine and the various implications which the United States has drawn therefrom. As far back as the middle of the nineteenth century Secretary of State Clayton protested against a Costa Rican request for British protection in a territorial controversy with Nicaragua, this protest being one of the important preliminaries to the Clayton-Bulwer Treaty in 1850. A quarter of a century later Secretary of State Frelinghuyssen deemed it desirable to make public objection to Costa Rica's willingness to have a dispute with Colombia submitted to European arbitration—that of the King of Spain. A more recent instance of pressure from the United States was found in the dissolution of the Central American Court of Justice, after it had found in favor of the suits brought by Costa Rica and Salvador against Nicaragua over the Bryan-Chamorro Treaty of 1914. With such preliminaries it is not surprising that of late years a most wary attitude towards the Monroe Doctrine has been apparent in Costa Rica, situated as it is between Panama and Nicaragua, in both of which American penetration has not always been of the most pacific variety.<sup>23</sup>

While Costa Rica declared war on Germany in May 1918, she was the only belligerent among the army of

<sup>23</sup> Compare, among the many standard sources on this subject, Dana Gardner Munro, *The Five Republics of Central America*; Charles P. Howland (editor), *Survey of American Foreign Relations*, Chaps. IV–XI; and J. Reuben Clark, "Memorandum on the Monroe Doctrine," *U. S. Department of State Publication* 37.



Allied and Associated Powers which was not invited to the Peace Conference. This pointed slight was followed by the exclusion of Costa Rica, in addition to Mexico and Santo Domingo, from League membership. That this action, which kept Mexico from joining the League until 1931, was a direct result of Anglo-American connivance is a matter of public record.

The second article of Chapter III of the British draft convention on the League of Nations suggested in January 1919 that:

Powers not represented at the present conference may be invited to become parties to the present convention. These invitations will be conveyed by the Chancellor of the League.

To this article, however, was appended a really remarkable official footnote which read as follows:

I. On the assumption, as a matter of procedure, that the convention will in the first instance be negotiated and initialled by the States forming the Council of the League, and that it will then be offered for signature, during the Conference of Peace, to all the other States represented at that conference (except the enemy Powers), it is suggested that a protocol should be annexed to the convention, as originally initialled, naming the States to whom invitations should be issued as soon as the convention is finally signed by the States represented at the conference. It is suggested that invitations should be issued as follows:

a) to any States at war with Germany, or having broken off diplomatic relations with her, which may not be represented at the conference;

(N. B.—It is possible that the United States may advise against the inclusion of some Latin American State coming within this category, e. g., Costa Rica.);

b) to European neutrals, i. e., Sweden, Norway, Denmark, Holland, Switzerland, and Spain;

c) to Latin American States not represented at the present Peace Conference, except Mexico, Haiti, Santo Domingo, and any other State which, in the opinion of the United States, may be considered unready for membership (without prejudice to

the right of such State to apply for membership under Article 17);

d) to Persia.<sup>24</sup>

Three months later, just after the final meeting of the Peace Conference Commission on the League of Nations, the question of whether or not Costa Rica should be an original member of the League was definitely decided in the negative. No formal list of neutral nations, to be invited at the outset to accede to the Covenant, was ever approved. The thirteen countries actually invited were those whose representatives had earlier been allowed to express their views on the Covenant before a sub-committee of the League of Nations Commission.<sup>25</sup> It had by this time been arranged that Haiti, then controlled by American marines, should come in as a belligerent against Germany and as one of the signatories of the Treaty of Peace. The British raised informal objections to the inclusion of Mexico, but by tacit consent it was left in the hands of the American delegation to decide whether Santo Domingo and Costa Rica should be what the British draft convention had blandly called "unready for membership, in the opinion of the United States." Mr. Miller discussed the subject with Secretary Lansing on April 11, 1919, and "Mr. Lansing expressed the opinion that both the Dominican Republic and Mexico should be invited, but not Costa Rica." At the instance of Colonel House a memorandum was prepared by Mr. Miller for President Wilson asking his decision. On April 15 President Wilson replied:

In returning this memorandum which you were kind enough to send me, let me say that I think on the whole it would be wise not to include any one of these three States in the invitation.<sup>26</sup>

<sup>24</sup> Quoted by David Hunter Miller, *The Drafting of the Covenant*, Vol. II, p. 116. See also p. 51 above.

<sup>25</sup> See pp. 137 ff.

<sup>26</sup> See Miller, Vol. I, pp. 466-67.

## COSTA RICA ASKS INTERPRETATION OF MONROE DOCTRINE

President Wilson and his advisers kept Costa Rica out of the League because they opposed the presidency of General Tinoco, in office by a *coup d'état*, and because an invitation to his government to join the League would have been tantamount to its recognition.<sup>27</sup> It was therefore the more ironical that scarcely a month after the Republican anti-League triumph of 1920, Costa Rica, by unanimous vote of the First Assembly, was on December 16, 1920 elected to membership in the League.<sup>28</sup> This brought an eventual show-down on the Monroe Doctrine nearer, for President Wilson had not only kept Costa Rica out of the League temporarily, but had also succeeded in getting that keystone of American foreign policy permanently recognized by the Covenant. And Costa Rica, having had no say whatsoever as to the content of the Covenant, not unnaturally was as a member State doubly entitled to question its reference to the Monroe Doctrine as a "regional understanding," which is the definition attempted in Article 21.

The resignation of Costa Rica from the League took effect on January 1, 1927, at the expiration of the statutory two years' notice. On March 15, 1928, the League Council addressed notes to Brazil and Spain, urging these governments to reconsider their notices of withdrawal, given in 1926, before they became effective. At the same time opportunity was taken to send a note to Costa Rica, expressing the satisfaction the League would feel should the government of that Central American republic reconsider its act of withdrawal. On July 18, 1928, Foreign Minister Castro of Costa Rica replied in a lengthy communication which plainly showed the part which the Monroe Doctrine had played in the resignation of that

<sup>27</sup> Compare *Survey of American Foreign Relations*, 1929, pp. 224 ff.

<sup>28</sup> Tinoco, however, had in the meantime been replaced by President Acosta, regularly elected and recognized by the United States.

country. It is perhaps not as banal as it sounds to point out that Costa Rica had to join the League, thereby satisfying her honor, giving her full right to criticize the Covenant, and setting the stage for publicity, before she could resign.

The essential parts of the Costa Rican note are its fifth paragraph and its conclusion, which said:

Under Article 21 of the Covenant, the international legal scope of the Monroe Doctrine was extended. It has since been converted, for all the nations signatory to the Treaty of Versailles, into a constituent part of American public law. This situation would involve no risk to the independence of small nations and could even, on the contrary, be regarded as the most effective weapon for their defense if, whenever their political horizon were obscured by the slightest shadow of a threat on the part of another nation and there were occasion to apply the Monroe Doctrine, an appeal could be made to an international organ of the importance of the League of Nations for an express and authorized declaration with regard to the actual scope and correct interpretation of the above-mentioned doctrine. It cannot be argued as a reason for a refusal to give this definition that, as stated in Article 21 mentioned above, this doctrine is a regional understanding, since the inclusion of various American nations in the League, and the fact that this doctrine is mentioned in the statute by which it was created, fully justify its definition by the League. It may here be pointed out that the doctrine in question constitutes a unilateral declaration.

. . . . .  
In view of the foregoing, the government of Costa Rica desires, before deciding to accept the invitation contained in your communication, to know the interpretation placed by the League of Nations on the Monroe Doctrine, and the scope given to that doctrine when it was included in Article 21 of the Covenant of the League. . . .<sup>29</sup>

#### THE SECRETARIAT FORMULATES THE LEAGUE'S POSITION

Few decisions taken by the Secretariat have been of greater fundamental importance than that forced upon

<sup>29</sup> *Official Journal*, October 1928, p. 1607.

it by this categorical and totally unexpected request from the little republic of Costa Rica. The obvious procedure, were the Secretariat merely an international civil service, would have been to leave to the Council determination of the general character of the League's reply, particularly since the Council was already scheduled to meet in Geneva for its fifty-first session on August 30. But such a course was open to grave objections.

Unless action were outlined for it in advance, as the leaders in the Secretariat then argued among themselves, the Council would be likely to table the request for an interpretation of the Monroe Doctrine, evasion being the easier because of the relative unimportance of Costa Rica, the danger of offending the United States, and the difficulty of securing the necessary unanimous opinion on so delicate and controversial an issue. The Secretariat, however, had to reckon with the fact that eight of the twenty Latin American republics were taking no part in the forthcoming Ninth Assembly, and that the Costa Rican note was really the formulation of a question to which most of Latin America, particularly Argentina, desired a definite reply. Moreover, the Council, convening on August 30, could scarcely be expected to prepare a reply before the opening session of the Assembly, on September 3. To call an earlier special session of the Council on the issue would merely have emphasized the difficulties without bringing any assurance of their solution. On the other hand, if no reply were ready when the Assembly met, there would have been risk of awkward scenes during the public discussion of the Kellogg Pact, signed at Paris on August 27. Several Latin American delegates were known to be prepared to attack the implied exception of the Monroe Doctrine from the Kellogg Pact. And if the League delayed an answer to the Costa Rican note those criticisms, delivered in the limelight of publicity

which floods the floor of the Assembly, would have been given additional force and sensationalism.

Confronted by this exceedingly thorny situation the Secretary-General, after a hasty exchange of communications with certain of the Council's "elder statesmen," himself assumed responsibility for working out a satisfactory formula for the Council's reply to Costa Rica. In substance, the preparation of that reply was the work of two members of section, in the Information and Political Sections of the Secretariat. The draft reply, an able State—or inter-State—paper, was ready for the consideration of the Council when it met on August 30. That body in private executive session, made several textual changes, none of them of vital importance. The Secretariat's reply, thus somewhat revised and announced as that of the Council itself, was then cabled to Costa Rica on September 1, two days before the Ninth Assembly met. Whereas the note from Costa Rica was not made public by the Secretariat until nearly a month after its receipt, when the answer had been framed, the reply of the Council was immediately released, probably with the intention of checking any surprise attack from the floor of the Assembly. To round out the episode the essential paragraph of the Council note may be quoted here:

In regard to the scope of the engagements to which the article [number 21 of the Covenant] relates, it is clear that it cannot have the effect of giving them a sanction or validity which they did not previously possess. It confines itself to referring to these engagements, such as they may exist, without attempting to define them: an attempt at definition being, in fact, liable to have the effect of restricting or enlarging their sphere of application. Such a task was not one for the authors of the Covenant; it only concerns the States having accepted *inter se* engagements of this kind.<sup>80</sup>

Nothing succeeds like success. The reply to the Costa Rican request devised by the Secretariat undoubtedly

<sup>80</sup> The full text may be found in *Official Journal*, October 1928, p. 1608.

increased the League's prestige in Latin America, yet in no way alienated the United States. Thereby successful League intervention in the Bolivia-Paraguay controversy the following December (1928) was made much easier and thereby (which is most important for present considerations) future initiation of policy by the Secretariat in the political field was made more probable.

#### CONSTITUTIONAL SIGNIFICANCE OF COSTA RICAN EPISODE

In effect, the paragraph quoted above assures the nations south of the Rio Grande that the League does not regard the Monroe Doctrine as having any additional force because of the specific reference to it in the Covenant. At the same time, it assures the United States that any interpretation which Washington gives and Latin America accepts in regard to the Monroe Doctrine is in no way a matter of League concern.

This clever passage in the note prepared for the League Council was not original with its authors in the Secretariat. A glance at the *Minutes* of the fourteenth meeting of the Peace Conference Commission on the League of Nations, as quoted on page 192 above, will reveal the unacknowledged debt of the Secretariat to remarks made there by Lord Robert Cecil.

The real point, however, is not where the Secretariat got its ideas in this case, but what has been the legal and political effect of these ideas when formally presented under the imprimatur of the League Council. There is a very great difference between the expression of opinion by a British delegate in a private session of a commission of the Peace Conference, and the sanctification of that same opinion in a note from the League Council to a Latin American government. In the latter case a policy not merely formulated but actually initiated in the Secretariat establishes a precedent affecting the whole system of international relations and helping to determine the

meaning of the Covenant itself. We need not stress the curious assumption of a tone of judicial supremacy in the Council's note to Costa Rica, as where it is flatly stated that: "Such a task was not one for the authors of the Covenant." It is sufficient to have shown that the initiatory powers exercised by the Secretariat are very considerable. Certainly there is nothing novel in the drafting of important State papers, for cabinet acceptance, amendment, or rejection, by the appropriate arm of the national civil service. Such work is an ordinary duty of this organ of government. But the formulation of the most far-reaching policies in advance of any ministerial request thereon and the presentation to the cabinet, when it meets, of what approximates a *fait accompli*, is met with only in governments where the cabinet is extremely weak and the civil service exceedingly strong.

#### LIMITATIONS TO THE EXECUTIVE FUNCTION

The episode of the Costa Rican note, which was unusual in importance rather than in nature, is not to be taken as indicating that the Secretariat has usurped functions definitively attributed to the Council under the Covenant. The organic act very sensibly left the constitutional relations of Council, Assembly, and Secretariat to be worked out as experience showed advisable. The power of the Secretariat, both as regards Council and Assembly, has come to be something far greater than was anticipated by any of the framers of the Covenant in 1919. But it is not an unchecked power and there are obvious limits to its exercise. The Assembly has absolute control over the Secretariat budget and can at any time limit development in any particular direction by the simple process of financial attrition. The Council, however much it may rely upon the Secretariat in practise, retains undiminished all of its latent authority over that body. The fact that the Secretariat inspires League policy to a



surprising extent must be balanced against the fact that it seldom takes initiative in such matters without prior consultation with leading members of the Council to insure that such activity will not result in an unfavorable reaction. This is tantamount to saying that the inspiration of policy is generally confined to matters which are not of primary importance to the permanent members of the Council.

But, when all due qualification is made, it remains true, as Count Bernstorff and M. Gallavresi insisted in 1930, that: "The political influence of the Secretariat, and especially of its principal officers, is, in fact, enormous." It is this influence which makes natural the division of the Secretariat into the two types of civil servant and political officer. Just where the division between the permanent and temporary official will finally settle, whether below the grade of director of section or between that grade and the one of Under-Secretary, is relatively unimportant. The essential factor is that the Secretariat has definitely acquired a certain measure of executive function in addition to its original constitutional responsibility as an international civil service. And the organization of the Secretariat must be expected to reflect and express this acquired function.

The Secretariat has from the beginning exercised certain quasi-executive functions. In 1920 it was possible for the director of the Political Section (then Dr. Paul Mantoux) to sign with his own name telegrams purporting to come from the Council with reference to the Polish-Lithuanian controversy over Vilna.<sup>81</sup> In those days the Council seldom bothered even to amend a Secretariat report before adopting it, while at the present time Council members occasionally have a report in which their country is vitally interested drafted by their own national civil service, though rarely, if ever,

<sup>81</sup> Compare *Official Journal*, S. S. No. 4, December 1920, p. 31.

without Secretariat co-operation. It would seem, therefore, as though the initiatory powers of the Secretariat have been curtailed by reason of a greater interest in League affairs on the part of the Council.

The consideration, however, is relative rather than absolute. The Secretariat seemed to have more power when the League was much less powerful. It may have relatively less, yet actually more, directive authority now that actions taken by the League are more vital in character than was the case in 1920. Whatever executive function the Secretariat maintains is automatically strengthened by the increasing prestige of the League as a whole. And the decision of the Council, taken in 1930, to hold its sessions every four months instead of quarterly, does not indicate any lessening in the reliance which it places on the Secretariat.

In any examination of the functions of the different League organs there is an almost inevitable tendency to draw comparisons with pre-existing political forms. This is permissible, even necessary for purposes of illustration, as long as the comparisons are not distorted into definitions. The Secretariat indisputably holds and has tended to enlarge certain quasi-executive functions, as a comprehensive glance at the constitutional organization of the League would lead one to expect. But the succeeding chapters will also show that the Council in certain fundamentals has a cabinet status, though it relies more on the Secretariat than a national cabinet does on its civil service, and is more independent of the Assembly than is a responsible cabinet with reference to the legislature. One could not *define* the Council as the cabinet of the League, even if it had no special functions to be considered, partly because of its joint competence with the Assembly and partly because the Secretariat exercises certain cabinet functions for the Council, such as the nomination of its *rapporteurs*. And one cannot say that

the Secretariat acts as a cabinet because in the last analysis it is always responsible to and accomplishes its proposals through the Council and Assembly, which organs must take responsibility for the Secretariat's actions, no matter how independent they may seem on close examination.

If there is something confusing in the inability to use established definitions freely, it must be attributed to the fact that the constitutional development of the League refuses to be fitted by those definitions. World government, arising from an extremely loose confederation of member States reserving full national sovereignty in all but a very few specified instances, cannot be expected to evolve without the introduction of new political practises.

## CHAPTER X

### THE COMPOSITION OF THE COUNCIL

In spite of the fact that the Council is mentioned by name, and its powers outlined, in no less than eighteen of the twenty-six articles of the Covenant, its role in the early stages of League history was pitched in a modest key. For "a political instrument endowed with greater authority than any the world has hitherto seen," as the British Foreign Office enthusiastically defined the Council prior to its first appearance,<sup>1</sup> its début was surprisingly unassuming.

In marked contrast with the energy and ambition shown by the First Assembly, the first four sessions of the Council were colorless in program and casual in procedure. Doubtless this contrast can in part be explained by the fact that during the framing of the Covenant the part to be played by the Council was over-advertised, that of the Assembly under-estimated. But a more cogent cause for the secondary position of the Council of the League at the outset was its tacit subordination to the appropriately named Supreme Council of the principal war victors.<sup>2</sup> Before it could really attempt to fill the part designed for it by the Covenant, the Council had first to rally from the blow to its power and prestige given by the abstention of the United States; then to work through the mass of detailed post-war problems which the Supreme Council and the Conference of Ambassadors turned over to this diplomatic Cinderella;<sup>3</sup> and,

<sup>1</sup> "Commentary on the Covenant of the League of Nations," *Parliamentary Papers*, British Foreign Office, 1919, Cmd. 151, p. 13.

<sup>2</sup> Compare, for instance, the Council's note of Mar. 1, 1921 to the United States government on allocation of mandated territories, *Procès Verbal*, twelfth session, p. 76.

<sup>3</sup> Compare William E. Rappard, *Uniting Europe*, pp. 253-54.

finally, to survive the very serious crisis which came with the admission of Germany to membership.

Only since that admission, which made it an international rather than an inter-Allied organ, has the place of the Council in the League mechanism been subject to fruitful analysis. And it is because the constitutional characteristics of the Council have altered as its membership has changed that we consider the development of its physical composition in advance of its evolution as an organ of international co-operation.

#### THE COUNCIL CREATED BY COMPROMISE

As called into being, the Council was an instrument of compromise. Neither the Phillimore plan nor President Wilson's first draft covenant envisaged it as a necessary part of the League mechanism. The latter project provided for a Body of Delegates composed of the diplomatic representatives of the contracting Powers at the Seat of the League and for "a Secretariat to act as their ministerial agency," but for no other organs. The idea of balancing the democratic organ which later became the Assembly with a smaller executive body, incidentally safeguarding the interests of the Great Powers, was first formulated in a public document by General Smuts. Contemporaneously with the Smuts plan, Lord Robert Cecil began his advocacy of a Council which should be limited to the Great Powers. Under these influences President Wilson not merely adopted the suggestion of an executive council, but advocated authority for it *vis-à-vis* the Assembly which would have made the latter a virtually impotent body.<sup>4</sup>

<sup>4</sup> See p. 39 above. Compare also Charles Seymour, *The Intimate Papers of Colonel House*, Vol. IV, pp. 48-50, and Georges Scelle, *Une Crise de la Société des Nations*, pp. 7 ff. Professor Scelle is mistaken in attributing to Lord Robert Cecil, to the exclusion of General Smuts, credit for formulating the idea of the League Council.

After the smaller Powers at the Peace Conference had won their fight for some representation on the Council, the Covenant provided that this organ should consist of "Representatives of the principal Allied and Associated Powers, together with representatives of four other members of the League." The first, or permanent, group was defined by the preamble of the Treaty of Versailles as "the United States of America, the British Empire, France, Italy and Japan." The four non-permanent members, Article 4(1) of the Covenant further specified, "shall be selected by the Assembly from time to time in its discretion." But, "until the appointment of the representatives of the four members of the League first selected by the Assembly, representatives of Belgium, Brazil, Spain and Greece shall be members of the Council." Such, barring the absence of the United States, was the Council membership when it met for its first session at Paris on January 16, 1920, transacted as its sole business the selection of the members of the Saar Basin Delimitation Commission (in accordance with Article 48 of the Treaty of Versailles), and heard its chairman, M. Léon Bourgeois, somewhat unctuously declare that:

The decision to be taken today will be in the name of all States which adhere to the Covenant. It will be the first decree of all the free nations leaguering themselves together for the first time in the world to substitute right for might.<sup>5</sup>

#### GREAT POWERS NEVER A MAJORITY

The first point of interest concerning the Council as originally planned, and as it has evolved in practise, is that the Great Powers never achieved their anticipated majority. While the British early in the negotiations at Paris lost their fight to have the Council restricted to the five major victors, the agreed arrangement still provided that the non-permanent seats should be in a minority of one.

<sup>5</sup> *Procès Verbal*, first Council session, p. 5.

This division into five permanent and four non-permanent seats was originally suggested by General Smuts, who in his *Practical Suggestion* for the League of Nations, dated December 16, 1918, argued that:

The advantage of this constitution is that the Great Powers obtain a majority—although only a bare majority—representation on the Council and could not therefore complain that their interests run the risk of being swamped by the multiplicity of small States. On the other hand the intermediate and minor States receive a very substantial representation on the League, and could not complain that they are at the mercy of the Great Powers.<sup>6</sup>

Lord Robert Cecil had expressed the fear that a large Council "might lead to having a greater Power dragged along by the smaller Powers." The abstention of the United States, resulting in numerical equality between the permanent and non-permanent seats, might have been expected to increase that possibility. But the early meetings showed that in the Council as constituted the anticipation of an opposition between the great and small Powers was groundless. Brazil and Spain did not count themselves in the latter category while Belgium and Greece were, in 1920, satellites respectively of French and British foreign policy.<sup>7</sup>

The Council held eleven meetings during this first year, not a month elapsing in which it was not in session, and these initial experiences tempered any existing fear that the presence of two "intermediate" and two "minor" States might prove an impediment to the control exercised by the principal Allies, particularly by Great Britain and France. Rivalry between these two nations did, indeed, materially weaken the efficiency of the Council on

<sup>6</sup> Compare p. 21 above.

<sup>7</sup> In an article in the *London Times* of Feb. 27, 1929, Winston Churchill quoted Lloyd George, premier of Great Britain in 1920, as saying then: "A greater Greece will be an invaluable advantage to the British Empire."

several occasions during its early years.<sup>5</sup> And at times there has been a certain tension between the Assembly, as preponderantly the organ of the smaller Powers, and the Council, as that of the greater. But expectation of a division of the Council itself into blocs of great and small Powers did not materialize before the events of 1926.

#### A COUNCIL OF THE ALLIES

A second noteworthy aspect of the original composition of the Council was its continuation of the war-time alliance system. When the first Assembly of the League was convened, in November 1920, thirteen of the forty-two States then members were countries which had been neutral in the war. But whereas the neutrals started with 31 per cent of the Assembly membership, and rapidly increased that figure as more and more nations acceded to the Covenant, the Council started with just one neutral Power among eight represented (12.5 per cent) and did not add a second non-belligerent to its personnel until the Third Assembly, in September 1922, increased the non-permanent membership of the Council from four to six. Indeed, the Portuguese representative, at the session of the Peace Conference which adopted the League Covenant, argued that the naming of any neutral Power as a Council member was then illegal since none of them were on that date League members. The order of the qualifications in which Don Affonso Costa made this indirect protest against Spanish membership was not without portent of future political animosities over Council

<sup>5</sup> As in its failure even to express disapproval of the Italian bombardment and seizure of Corfu on Aug. 31, 1923. This came at a time when Great Britain and France were estranged over the latter's occupation of the Ruhr, an action which made the French delegate on the Council the less likely to bring strong pressure on Italy. Compare T. P. Conwell-Evans, *The League Council in Action*, p. 81. In 1931, moreover, the Japanese government let it be understood that since Tokyo had not opposed the French occupation of the Ruhr, Japan did not anticipate opposition from Paris regarding the Japanese occupation of Manchuria.



membership: "in my capacity as president of the Portuguese delegation, and also as a professor of law."

This difference between the two organs was further revealed in their attitude towards membership of the defeated Powers. The Assembly admitted Austria and Bulgaria at the close of its first session, December 15 and 16, 1920. Hungary became a member on September 12, 1922. But Germany, the first of the defeated Powers to secure Council membership, was not admitted to the League until September 8, 1926. It is true that Germany did not make overtures for membership before 1924, and that further delay was partly due to her request, not granted, for an exceptional position in relation to Article 16 of the Covenant. Behind all this, however, was the fact that the Council as at first constituted had no place for any but victorious Powers and one or two neutrals whose delegates could be trusted not to make difficulties for the principals. This was in part a result of the definite duties in execution of the peace treaties devolving upon the Council because of various articles in these instruments.<sup>9</sup> The Council at the beginning could scarcely be both a neutral instrument and an authorized agent for the execution of semi-punitive clauses directed against the defeated Powers, such as provisions for investigation in regard to their disarmament. Because Allied domination was early more apparent in the Council than in the Assembly, it follows that the changes which have taken place since Germany acquired membership have been more pronounced in the former organ.

#### "THE BRITISH EMPIRE" ON THE COUNCIL

A third interesting point about the Council as created by the Covenant is the fact that it was not Great Britain but the British Empire which was given one of the per-

<sup>9</sup> Compare, for instance, Article 48, Article 17 of the Annex to Article 50, and Article 213, of the Treaty of Versailles.

manent seats. Article 4 allots these to "the Principal Allied and Associated Powers" and "the British Empire" as a unit is described as one of these five principals in the treaty of peace with Germany by which the League came into being. Unless the doctrine of double representation is admitted this would seem to indicate that, since the Empire as a whole possesses a permanent seat on the Council, none of its constituent parts should be separately represented there.<sup>19</sup>

That, however, was by no means the opinion of the British and the dominion delegations at the Peace Conference. It was primarily because these Empire delegates wished to make sure of dominion eligibility to the Council that they fought so resolutely, and with complete success in the case of Article 4, for utilization of the phrase "member of the League," rather than the word "State," throughout the Covenant. But it was obviously questionable in their minds, as it must be to any detached observer, whether this revision of wording met the case in full. For that reason Sir Robert Borden, the Canadian premier, raised the question categorically and was answered by the following memorandum, signed by Clemenceau, Wilson, and Lloyd George, and dated May 6, 1919, eight days after the adoption of the Covenant by plenary session of the Peace Conference:

<sup>19</sup> There has been some uncertainty as to whether the self-governing dominions are, from the strictly constitutional viewpoint, to be regarded as integral parts of the British Empire. The issue was settled affirmatively by the report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926, which said on this point: "There is, however, one most important element in it [the British Empire] which, from a strictly constitutional point of view, has now as regards all vital matters, reached its full development—we refer to the group of self-governing communities composed of Great Britain and the dominions. Their position and mutual relation may be readily defined. *They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though tied by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.* (Italics in original. See *Summary of Proceedings*, Imperial Conference, 1926, Cmd. 2768.)

The question having been raised as to the meaning of Article 4 of the League of Nations Covenant, we have been requested by Sir Robert Borden to state whether we concur in his view, that upon the true construction of the first and second paragraphs of the article, representatives of the self-governing dominions of the British Empire may be selected or named as members of the Council. We have no hesitation in expressing our entire concurrence in this view. If there were any doubt it would be entirely removed by the fact that the articles of the Covenant are not subject to a narrow or technical construction.<sup>11</sup>

So far as the League was concerned, of course, this memorandum had no legal force whatsoever. It is noticeable, moreover, that even as an expression of individual opinion it is tacitly opposed to any claim by India to eligibility on the Council. That country was, and is, in the League only by virtue of being a signatory to the Treaty of Versailles, as also was that forgotten principality the Hedjaz, now numbered neither among the member nor non-member States. Whatever may be said of the dominion case for Council membership, such claim in the case of India must first meet the contention that this country does not yet fulfill the prerequisite for League membership laid down by Article 1 of the Covenant, which limits eligibility therefor to "any fully self-governing State, dominion or colony." As much was admitted by the fact that until 1929 the so-called Indian delegations to the Assembly sessions were always headed by British officials, while the claim that this "national delegation" should be responsible to the Indian legislature is steadfastly countered by the government of that country with the constitutional objection that India has not reached full dominion status.

None the less it was India which first came forward—doubtless to emphasize her wish for self-government—as

<sup>11</sup> Quoted by David Hunter Miller, *The Drafting of the Covenant*, Vol. I, p. 489.

a candidate for a second British seat on the Council. In 1922, when the Third Assembly increased the number of non-permanent Council members from four to six, two delegations voted for the election of India to one of these places. The following year, at the Fourth Assembly, the Indian candidacy again got two votes and Canada also came forward to receive one ballot. In the Assemblies of 1924 and 1925 India continued among those who also ran, obtaining one vote each time, opined by many to be her own. But the significance of the matter did not lie in the position of India at the bottom of the poll for Council seats. Much more important was the mere fact of the candidacy of a British dependency for the body on which the British Empire was already permanently represented. This indicated that Lord Robert Cecil had somewhat misjudged the future when he told Colonel House (according to David Hunter Miller) that the British dominions "did not expect to be on the Council and did not want to be."<sup>12</sup>

The objective of dominion membership on the Council was attained, though not to India's advantage, at the election held by the Eighth Assembly, in 1927. The year previous Lord Balfour had successfully steered through the Imperial Conference of 1926 the so-called "treaty formula" whereby British dominions are acknowledged to have the right of separate action in their dealings with foreign States, while in their relations with the United Kingdom and with each other "they remain a unit and are not subject to international scrutiny or arbitration."<sup>13</sup> In British eyes this step justified action to put into effect the claim as to the right of the dominions to separate representation on the Council. Incidentally, the Balfour

<sup>12</sup> The same, p. 481.

<sup>13</sup> William Y. Elliott, *The New British Empire*, p. 279. *The Statute of Westminster* (1932) establishes equality within the Empire as a legal and constitutional fact without settling the more difficult question of whether dominion relations *inter se* and with the United Kingdom are international.

formula seemed to be an adequate safeguard against the possibility of British and dominion representatives on the Council finding themselves in public disagreement there on questions of imperial policy.

In 1926, moreover, there had been a second increase in the non-permanent membership of the Council—from six to nine. All nine seats were filled by election of the Seventh Assembly and when the votes were tabulated it was found that the youngest British dominion—the Irish Free State—had received ten votes. Although this number represented only 40 per cent of the absolute majority requisite for election to the Council, it was far and away the highest vote yet received by any member of the “British Commonwealth of Nations.” The formidable strength of the Irish candidacy must have appeared as a portent in Whitehall, where free choice would certainly have selected for a Council seat some imperial partner other than the independent-minded Irish Free State. The resulting negotiations are obscure, but when the 1927 Assembly met, Canada was already accepted as a leading candidate for the three-year term of a non-permanent seat, and no other dominion was contesting.

There was, of course, much plausibility behind the Canadian candidacy. Enlargement of the Council had weakened the strength of the earlier hostility to separate dominion representation. Canada is the oldest and most populous of the self-governing dominions. With both the United States and Mexico (in 1927) absent from the League this was the only State which could represent the Continent of North America on the Council. Yet in spite of these arguments and in spite of the six votes (seven counting Ireland) swung by the British bloc, the opposition to granting a dominion a seat on the Council was strong. Canada only squeezed through to election with twenty-six votes, one more than a bare majority of the forty-nine States balloting, as compared with forty

votes for Cuba and thirty-three for Finland, the two other successful candidates. None the less, the British Empire had successfully established the privilege of having at least two representatives sitting simultaneously on the League Council.<sup>14</sup> This essential fact was disguised, not altered, by the tactful appointment of Raoul Dandurand, the famous French-Canadian statesman who had earlier been President of the League Assembly, as the racially non-British representative of Britain's first dominion to gain the honor of a Council seat.

#### REGIONAL ALLOCATION OF ELECTIVE COUNCIL SEATS

Canada's election in 1927 did not, however, terminate the story of dominion representation on the Council of the League. Increase in the number of elective seats to nine had provided opportunity to establish the right of a British dominion to hold a Council seat other than that permanently reserved for the British Empire. The next step was to have this second seat earmarked as a definite perquisite of the dominions as a group, which involved the election of another dominion to replace Canada at the expiration of her three-year term. At the Assembly of 1928 no British dominion was a candidate and none of them received as much as a single vote. The same was true in the 1929 Assembly. But in 1930, when the seat

<sup>14</sup> When revision of the World Court statute was discussed in Geneva, in March 1929, the British government took steps to give additional strength to this basis of dual representation. Sir Cecil Hurst, British representative on the international committee of jurists examining the statute, recommended that its Article 31 be interpreted to let the judge of a British dominion sit on the Court in cases involving interests of that dominion, and regardless of the presence of a judge of British nationality. Article 31 of the Court statute says: "If the Court includes upon the bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge." Hurst withdrew the proposal when a majority of the other jurists attacked it as improper. It was pointed out that as long as the British Empire refuses to admit World Court jurisdiction in disputes within the Empire, one judge from the Empire on the Court is enough. It is difficult to see why the argument is not equally applicable to the Council.

held by Canada fell vacant, the Irish Free State was an avowed candidate as Canada's successor, and achieved that ambition by securing thirty-six votes, compared with forty-one votes for Guatemala and thirty-eight for Norway, the other two successful candidates. Although the Irish delegation made it plain that their country was a candidate on its own merits, rather than as a British dominion, the principle seems established that two of the fourteen Council seats—one permanent and one non-permanent—should be held continuously by the British Empire. A further test will come in September 1933, when the term of the Irish Free State expires.

With the establishment of the dominions' claim to representation on the Council the tacit allocation of elective seats has reached the stage where these elections by the Assembly are virtually a foregone conclusion. Of the nine elective seats, three by unwritten rule go to Latin American countries, two have in the past been re-allotted to Spain and Poland in defiance of the principle of rotation of seats, three other seats have been passed around between members respectively of the Little Entente, of the Scandinavian countries, and of the Asiatic States other than Japan. If the last elective seat is definitively allotted to a British dominion it leaves States outside these groups, such as Austria, Bulgaria, Greece, Hungary, and Portugal with no chance of representation on the Council. That the issue is one which is causing real irritation among States thus excluded was clearly indicated by the Portuguese delegation at the Eleventh Assembly, which after the failure of their country to secure election to the Council issued the following formal communication:

The delegation of the Portuguese Republic to the Eleventh Assembly of the League of Nations, having drawn the attention of the previous Assembly to the position in which countries not belonging to certain groups, established with a view to the election of the non-permanent members of the Council, find themselves;

Recognizing that this situation has recently increased in gravity, and that it has ended by the exclusion from the Council of several States;

Convinced that such a system is not compatible either with the rights of those States or with the fundamental principles of the League of Nations or with its constitutional laws or with the decisions of the Assembly;

Decides, as long as the present state of affairs endures, to abstain from becoming a candidate for the Council and to use every effort to introduce into the system in force those amendments which are indispensable for safeguarding the essential principle of the equality of States.<sup>15</sup>

The situation above outlined, however, is but a major instance of the political and constitutional problems which center around the nine non-permanent Council seats. To understand how these have arisen it is necessary to trace the history of the Council's development to its present form.

#### REASON FOR FIRST INCREASE OF NON-PERMANENT SEATS

The refusal of the United States to assume the permanent seat allotted that government brought the first change in the Council as designed by the League Covenant. Though negative in nature this revision completely disorganized the balance which the framers of the Covenant had sought to secure for the Council, and made positive alterations more probable. The first of these, the increase in the number of non-permanent seats from four to six, was initiated by a resolution of the Third Assembly adopted September 25, 1922.

This increase was virtually necessitated by the grim determination with which most of the original non-permanent members of the Council were clinging to their seats. Belgium, Brazil, Spain, and Greece had been

<sup>15</sup> As a result of this Portuguese *démarche* the Twelfth Assembly, on Sept. 25, 1931, requested the Council "to appoint a special committee to study the existing system of elections to the Council and to report to a future session of the Assembly on any reforms which may appear desirable."



named in the Covenant as the first non-permanent members. And the irony behind the efforts of the first three of these to secure re-election year after year was not lessened by the exceedingly informal way in which they had originally been chosen for these places. As recounted by David Hunter Miller:

I went to see Cecil [on Apr. 20, 1919] and after some discussion we agreed on Belgium, Brazil, Spain, and Greece as the four States. We thought that Belgium and Brazil were more or less inevitable; that it was necessary to choose a neutral, and Spain was the largest, the only possible alternative being Norway; and that Greece was the best of the Balkan States. I thought that perhaps China should be selected instead of Greece but was convinced on this point by the idea that, for the present one Asiatic Power [Japan] was enough.

While my diary says nothing about it, I have a recollection that Mr. Balfour and Colonel House talked over this matter the same afternoon and that they then agreed on the four States mentioned.<sup>16</sup>

With the ousting of Veniselos and the return of King Constantine "the best of the Balkan States" appeared none too good to the leaders of the First Assembly, and in the first election of non-permanent Council members, for a term covering the calendar year 1921, Greece went out and China took her place. But this special case, the result of domestic upheaval which would have made the continuation of Greece on the Council almost preposterous, brought only slight change to the original composition of the organ. Spain, Brazil, Belgium, and China were re-elected by the Second Assembly. When the third Assembly convened, in September 1922, it was obvious that none of the governments holding non-permanent seats would voluntarily surrender that privilege, and that none of the Great Powers would take the lead in sponsoring electioneering, certain to give deep offense, to turn the incumbents out. From this period

<sup>16</sup> Vol. I, p. 477.

dated the intrenchment of the unfortunate belief that the surrender of a non-permanent seat implies something derogatory to the dignity and prestige of the outgoing member.

#### THE CONSTITUTIONAL PROBLEM

The root of the difficulty was constitutional. It is found in the broadly permissive wording of the second sentence of the first paragraph of Article 4 of the Covenant, which in the English text says of the four non-permanent Council members originally established that:

These four members of the League shall be selected by the Assembly from time to time in its discretion.

And in the equally official French text:

*Ces quatre membres de la Société sont désignés librement par l'Assemblée et aux époques qu'il lui plaît de choisir.*

In the First Assembly, both in its First Committee and in plenary session, these texts aroused long and inconclusive discussions.<sup>17</sup> Effort was then made to rule that no non-permanent member of the Council should serve for more than two consecutive periods of two years. This, it was felt, would insure the principle of rotation while preserving for an adequate period the services of those representatives who were obviously important to the work of the Council. But it was also argued that such a ruling would be unconstitutional, by limiting future Assemblies, whereas the Covenant stipulated their "discretion" in the matter, reinforcing this by the word *librement* in the French text. As was said later, "if there are rules then there can be no freedom of discretion."<sup>18</sup>

<sup>17</sup> See *Records First Assembly*, plenary meetings, pp. 414-35. Compare also Scelle, Chap. I; and Schücking and Wehberg, *Die Satzung des Völkerbundes*, pp. 300-12.

<sup>18</sup> *Records Third Assembly*, plenary meetings, p. 335.

For the same reason the First Assembly discarded a resolution determining the general distribution of the four non-permanent members: "three shall be selected from among the members of the League from Europe and the two American continents, and one selected from among those from Asia and the remaining parts of the world." However, it did adopt a *recommendation* to this effect, thereby establishing the principle of regional representation almost as definitely as though the resolution had been deemed constitutional. The question of the right of one Assembly to bind its successors was the more knotty because, at this initial stage of League history, there were some who regarded each Assembly as an impermanent body, with no continuity of existence from one year to the next.<sup>19</sup>

While it was obvious to the First Assembly that elimination of the tangle would require an amendment to the Covenant, giving the Assembly the specific right to regulate the election of the non-permanent Council members, it had been agreed that no amendments would be acted upon prior to consideration by a special committee to be appointed by the Council.<sup>20</sup> The First Assembly, in short, had revealed the existence of all the makings of a crisis over the non-permanent Council seats, but had been able to do nothing to solve the difficulties.

By the time of the Second Assembly many of the smaller Powers had decided it was time to exercise their power of "discretion" in selecting non-permanent Council members. Obviously the least controversial way to secure a change in representation was to inaugurate some system of rotation in office, a method which the Council Committee on Amendments had indorsed. Accordingly, the Assembly, on October 5, 1921, passed a resolution

<sup>19</sup> See pp. 505-07 below.

<sup>20</sup> This committee was appointed by the Council at the opening of its twelfth session, on Feb. 21, 1921. It is perhaps worth noting that of its eleven members six belonged to nations with representation on the Council.

declaring "that the non-permanent members of the Council should, in future, be elected according to a system of rotation for a fixed period." The First Committee of this Assembly, after overcoming a captious opposition from the Spanish member,<sup>21</sup> proposed further that the non-permanent members should be elected for four years. Half of these four seats, the plan continued, should be renewed every two years, on the same model and for much the same reasons as the "staggered" elections of United States senators. Retiring members, it was recommended, should have to wait four years before being eligible for re-election. The plan was not pressed because it was already apparent that there would be an increase in the number of non-permanent seats. But it served as a basis when the present system of election was put into force in 1926.

#### THE EFFORT TO AMEND ARTICLE 4

Under Article 4(2) of the Covenant it is within the competence of the Council, with the approval of the majority of the Assembly, to increase both its permanent and non-permanent membership. But to inaugurate a definite scheme of rotation in office for non-permanent members was held to require an amendment to the Covenant. Under Article 26 such amendments become effective when ratified by all the members of the Council and a majority of the Assembly. There is, however, a great difference in the facility of securing the same approvals in the two cases. In the request for increased membership, a non-permanent Council representative, facing the full limelight of publicity, could scarcely deny to others equally eligible the privilege of a seat which his own country valued too highly to abandon. The enabling amendment necessary to introduce a system of rotation

<sup>21</sup> Compare Scelle, p. 14.

was to complete the inadequate step of increased Council membership. But all that was necessary to block this amendment was for a government already represented on the Council quietly to withhold its ratification, giving no reasons for its unadvertised delay and thereby averting public criticism, always more tolerant of sins of omission than of those of commission.

On the same day (October 5, 1921) that it passed the resolution in favor of rotation, referred to above, the Second Assembly without a dissenting vote approved an amendment to the Covenant, now Article 4(2 *bis*) of that Constitution, declaring that:

The Assembly shall fix by a two-thirds majority the rules dealing with the election of the non-permanent members of the Council, and particularly such regulations as relate to their term of office and the conditions of re-eligibility.

Forthwith it was to be demonstrated that a nation may favor a project at Geneva, under the watchful eye of the world press, and still do nothing to make that nominal support effective. Spain, realizing that the Assembly could scarcely terminate her "non-permanent" seat, except through the device of rotation, simply failed to ratify the amendment which would have paved the way to putting that system in effect. In this policy the Madrid government was seconded by that of France, at that time interested in maintaining Belgium on the Council because of the close co-operation of the two governments in occupied Germany. On France and Spain, therefore, must fall the onus of balking a rational, impartial, simple, and early solution of the Council membership problem. They were the only members of the Council which of intention failed to ratify this vital amendment of the 1921 Assembly, which in a comparatively short space of time secured the requisite approval from a majority of the nations represented in the Assembly, as well as from the other Council members.

To save something from a situation rapidly becoming intolerable the first part of the reform plan—the increase in non-permanent members from four to six—was carried through by the 1922 Assembly. But this revision was really a confession of powerlessness to handle the problem of the recalcitrant non-permanent Council member, at this time epitomized in the case of Spain. There were two more “permanent non-permanent members” but the goal of rotation in office seemed still as distant as ever. Spain, Brazil, and Belgium continued happily to sit on the Council until 1926, each of them thereby enjoying an unbroken term of seven years as “non-permanent” members. Uruguay and Sweden, the two additional members elected in 1922, were likewise re-elected by the Assemblies of 1923, 1924, and 1925. The only replacement was of China by Czechoslovakia in 1923, as a consequence of the complete collapse of central government in the former country.

In seven years just two nations—Greece and China—had vacated their seats on the Council, in each case as the result of a profound domestic upheaval. It began to appear as though the “non” in non-permanent membership had been written in invisible ink, decipherable only when the holder of such a seat experienced a violent revolution. In such cases the Assembly was able to administer a mild rebuke by dropping the distracted country from the Council. Such procedure, however, scarcely fulfilled the ideal of free selection of the elective Council members.

#### ANGLO-FRENCH METHODS IN THE CRISIS OF 1926

Such was the situation early in 1926 when Germany, as a result of the Locarno treaties, made formal application for admission to the League of Nations. The story of the ugly tangle which then ensued need only be sum-

marized here.<sup>22</sup> Partly it was due to the poor drafting of Article 4(1) of the Covenant. But fundamentally the difficulties of 1926 were a natural consequence of the hesitant, indecisive handling of the problem of non-permanent Council seats. Procrastination had given the League time to grow in stature and repute so that it was better able to confront its first organic crisis. The trouble was that the problem had been growing at least as vigorously as the power of the League to cope with it.

The clear understanding in the mind of Dr. Gustav Stresemann, then foreign minister of Germany, was that his country was to receive a permanent seat on the League Council and that no other changes were envisaged as the result of German admission. This argument he had used to overcome the vehement opposition of the German Nationalists to ratification of that Locarno treaty which meant voluntary and permanent acquiescence in the loss of Alsace and Lorraine, Eupen and Malmédy. The probable advantage of unqualified Council membership was indeed almost the only card with which Stresemann could counter the harangues of the pre-Hitlerites. And the German cabinet, on February 8, 1926, in adopting the formal note of application for admission to the League, justified it to domestic critics with a statement which read, in part, as follows:

It is of vital importance that Germany should obtain a permanent seat in the Council of the League. The possibilities that open up for Germany cannot be measured by the past actions of the League, which have given just cause for complaint. While it would be a mistake to entertain too high hopes of what can be obtained, at least Germany will be con-

<sup>22</sup> Perhaps the most graphic account is found in the chapter entitled "Germany Joins the League" in John Spencer Bassett's, *The League of Nations*. Compare also José Carlos de Macedo Soares, *Brazil and the League of Nations*. More critical studies are Scelle, *Une Crise de la Société des Nations*; and Jean Ray, *Commentaire du Pacte de la Société des Nations*, pp. 178 ff.

sulted and will vote upon all the more important affairs that come within the competence of the League.<sup>23</sup>

Spain and Brazil, however, viewed the entrance of Germany primarily as an opportunity to press claims to permanent seats which had from the outset been latent in the minds of their governments. The situation was in no way eased by revelations that certain leading members of the Council, notably Great Britain, had earlier pledged themselves to support the Spanish case.<sup>24</sup> The special meeting of the Council, called at Geneva for February 12, convened in an electric atmosphere, though its professed purpose was merely to summon an extraordinary session of the Assembly for the purpose of admitting Germany. There were reports, soon to materialize, that Poland would also claim a permanent seat, with the support of France. The special Council meeting added the question of a further enlargement of the Council to the agenda for the forthcoming extraordinary session. China and then Persia forthwith carried the situation to absurdity by arguing that they, too, had claims to be allotted permanent Council seats. At least two other countries, Belgium and Czechoslovakia, let it be known that if the fight became a free-for-all they might also enter the ring. Then, at the end of February, the government at Rio de Janeiro made public the extraordinary intention, called blackmail at the time, of vetoing the German request for membership if Brazil were not given a permanent Council seat.<sup>25</sup>

<sup>23</sup> Quoted by Bassett, p. 302.

<sup>24</sup> On Mar. 4, 1926 the prime minister, Mr. Stanley Baldwin, said in the House of Commons: "I have renewed the support of Spain which was given to her under the government of my right honorable friend the member for Carnarvon" [Mr. Lloyd George]. *Parliamentary Debates*, Vol. 192, No. 23.

<sup>25</sup> Compare Macedo Soares, pp. 126 ff. This Brazilian commentator throws a lurid light on the extent to which domestic political considerations can affect the stability of the League: "The Brazilian government thought that the veto it held as a member of the Council, since it dominated the Locarno settlements, would suffice to enable Brazil to wrest the acceptance



The reputation of the League gained no credit from the tactics with which some of its outstanding personalities sought to smooth over this sorry wrangle just prior to and during the special session of the Assembly, in March 1926. Instead of facing the situation courageously through the established League machinery the leading diplomats at first endeavored to reach a settlement by bargaining processes. The secret meetings at Geneva of representatives of the Locarno Powers, prior to the convening of the Assembly on March 8, were perhaps justified by the fact that the viewpoint of Germany, as yet a non-member, could best be obtained in this manner. But anger and resentment were roused in many quarters by the well-founded suspicion that Briand and Chamberlain were between them seeking to arrange matters affecting the future of the entire League.

Then, with general approbation, Dr. Unden, Sweden's delegate on the Council, announced that his country would vote against giving Poland a permanent seat. Norway and Holland promptly seconded this stand. It was learned that several of the Latin American members were equally ready to denounce the overweening pretensions of Brazil. In spite of all their secret negotiations and intra-mural pledges it was doubtful that the foreign ministers of France and Britain could swing a majority of the Assembly to support the Council changes on which they sought to agree. The little neutrals of north Europe had for the first time broken the dominance of France and the British Empire, heretofore all-powerful in the League.

The growing opposition to Great-Power diplomacy was, however, weakened by fear that France might obliquely prevent Germany's entry rather than abandon

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of its terms from the League, or at any rate would be sufficiently dramatic as a gesture on the world stage to hide the incompetence of the actor and strengthen its position in home politics."

the claims of Poland. Dr. Unden accordingly unwillingly agreed to a compromise. Sweden agreed to surrender her non-permanent seat to Poland on the understanding that one of France's allies on the Council would retire simultaneously in favor of a *bona fide* neutral. The two allies in question were Belgium and Czechoslovakia, and it was not by verdict of a toss-up that the one chosen for sacrifice was also the one less intimate with the Quai d'Orsay.<sup>26</sup> Czechoslovakia, it was arranged, should yield her place on the Council to Holland, while Sweden was replaced by Poland. With the understanding that the Assembly would ratify this arrangement at the regular September "election," Poland tacitly withdrew her claim to a permanent seat and Germany agreed not to withdraw her application for League membership.

This left only the Spanish and Brazilian claims outstanding, though both of them had become more resolute because their representatives had been left on the outside during the private negotiations of the Locarno Junta over the Polish case. Here was another instance of the offensive and ineffective technique with which Briand and Chamberlain sought to resolve a problem which was in part of their own making. Totally unable to settle these remaining differences, the foreign ministers of Great Britain and France dropped their pretensions as peace-makers and did what a proper respect for the Covenant would have dictated from the beginning—turned the problem over to the extraordinary session of the Assembly. This body, after some sharp criticism of Anglo-French methods which had brought the League close to disruption, appointed a committee of fifteen to consider the reorganization of the Council. Thus, in the words of Professor Bassett, "ended the stormy and futile first

<sup>26</sup> It may also be noted that Dr. Benes, foreign minister of Czechoslovakia, has always been one of those whose faith in the League is strong enough to make sacrifices in its behalf. His friendly relations with Dr. Stresemann perhaps facilitated the compromise.

attempt to extend the membership of the Council along the old European principle of the concert of the Great Powers.”<sup>27</sup>

#### PROPOSALS OF COMMITTEE ON REORGANIZATION

The Committee on Reorganization, in which Lord Robert Cecil as British delegate proved the guiding spirit, attacked its difficult task with methods totally different to the Briand-Chamberlain technique. Its meetings were held in public. There was no inner circle of secret negotiators to arouse resentment and suspicion among the unrepresented Powers. The full membership, representing the ten members of the Council plus Argentina, China, Germany, Poland, and Switzerland, was extensive enough to show consideration for every vital national interest in the problem, yet small enough to handle its task with facility. Cheap politics and war-time psychology were both reduced to a very subordinate position in the picture. Political considerations there had to be, particularly in view of the recalcitrant attitude of Spain and Brazil, but they were not allowed to become pre-eminent. In fact, the very ease and facility with which the committee functioned made it a working model for two of the most important Council reforms under consideration: further increase in the number of non-permanent seats; and their distribution “with due consideration for the main geographical divisions of the world, the great ethnical groups, the different religious traditions, the various types of civilization and the chief sources of wealth.”<sup>28</sup>

In meetings which were protracted for over two months, in a vain attempt to make Spain and Brazil reconsider their claims to permanent seats, the committee

<sup>27</sup> *The League of Nations*, p. 322.

<sup>28</sup> A resolution of the Third Assembly declared it “desirable” that these factors should weigh in the election of non-permanent Council members.

gradually forged its plan of reorganization. The main provisions were:

1. Designation of Germany, and Germany only, as the holder of a new non-permanent seat, raising the number in this category to five.

2. Creation of three new non-permanent seats, making a total of nine in this class. These seats were to be held for three years, one-third of them to be replaced each year by the three candidates securing the highest number of votes in the Council election at the regular annual meeting of the Assembly, with the prerequisite that in each case a majority of the votes cast must be secured.<sup>29</sup> To initiate this system it was proposed that all nine non-permanent members should be elected by the 1926 Assembly, three for a one-year, three for a two-year, and three for the regulation three-year term.

3. Acceptance of the doctrine of re-eligibility for non-permanent seats, with certain important limitations. These were (a) that the number of such re-elected members on the Council should not exceed three at any one time; (b) that each request for re-eligibility must be voted upon by the Assembly, and should require a two-thirds majority of those voting in order to be approved. Lacking fulfillment of these conditions a retiring member must wait three years before again becoming eligible as a candidate.

4. Recommendation, a matter of principle rather than rule, that three of the nine non-permanent seats should be divided among the Latin American Powers and that "adequate representation should be given to Asia." This

<sup>29</sup> Contemporaneously with the introduction of this report the Norwegian delegation to the Seventh Assembly urged that the non-permanent Council members should be elected by proportional representation—the single transferable vote. It was pointed out that under the present system all three candidates can be elected by a bare majority of the Assembly, leaving the minority entirely unrepresented. The success of this proposal would probably seriously have undermined the relatively huge voting strength of the British Empire bloc. It came to nothing.

recommendation has not served to eliminate, but to decentralize and intensify, the perhaps inevitable log-rolling by which the annual elections to the Council are made formal ratifications of pre-arranged selections.

#### THE OUTCOME FOR BRAZIL AND SPAIN

Finding their cases for permanent Council membership lost, Brazil and Spain gave the requisite two-year notice of withdrawal from the League, the former on June 12 and the latter on September 8, 1926, the day on which Germany's application for membership was passed by unanimous vote of the Seventh Assembly. Both these Powers had been represented on the League from the outset. Spain, which withdrew its notice of resignation nearly six months before it became effective, was promptly re-elected to the Council by the Ninth Assembly and has sat there ever since. This indicates that neither Power would have lost any practical advantage by abandoning its intransigent attitude in 1926.

The eventual solution did not restrict the re-eligibility of a non-permanent member to a second three-year term. As was pointed out to Spain before she rescinded her notice of withdrawal, a non-permanent member which can periodically impress two-thirds of the Assembly with its claim to Council membership is assured of what in fact amounts to a permanent seat. On September 10, 1928, Spain, back in the fold of League membership, secured the votes of forty-six out of the fifty nations represented in the Ninth Assembly and led the list of the three Powers (Spain, Persia, and Venezuela) elected to the Council for the term 1928-31. The same afternoon the Spanish request for right of re-eligibility was confirmed, and in 1931 the Madrid government, albeit a very different government to that in power in 1928, was re-elected for the term 1931-34. The other League members were eager to placate Spain and there

is no reason to suppose that some such compromise could not have been worked out just as easily prior to the crisis of March 1926.

Because it had *not* been worked out, both Brazil and Spain were encouraged to become arrogant in their pretensions, which in turn furthered the unfortunate effort to solve the problem by intrigue. Utilization of secret diplomacy had its natural result when both Brazil and Spain took the extreme position of threatening resignation in the event their claims were disallowed. Once publicly committed, national pride forced continuation of a course from which the Spanish government had the moral courage to disassociate itself before the notified withdrawal became effective. Special favors to Spain after her return to Geneva were, after all, only in the nature of a tacit recognition that the crisis of 1926 had been a joint responsibility in which even the framers of the Covenant were involved.

#### THE ASSEMBLY ESTABLISHES CONTROL

The report of the reorganization committee was adopted first by the Council and then by the Seventh Assembly in the form summarized on page 362. However, on the recommendation of the First Committee of the Assembly, to which the Council's resolution on the report was referred, one significant addition was made.

The constitutional amendment of 1921 (now Article 4(2 *bis*) of the Covenant), giving the Assembly power to fix rules "dealing with the election of the non-permanent members of the Council," had finally been ratified by France and Spain in the early summer of 1926, and came into force on July 29 of that year. The French ratification followed the evacuation from Germany of a majority of the Belgian army of occupation, which perhaps lessened the value to France of Belgian

membership on the League Council. The Spanish ratification was made after Spain had determined to resign from the League, but before that decision was publicly announced. A government with the punctilious traditions of Madrid could scarcely have withdrawn from the League because its claims to a permanent Council seat were disallowed, and *after* that action have removed its veto on other countries getting representation! These ratifications, of course, enabled the reorganization committee to draft its report. In view of the previous difficulties, however, the First Committee of the Assembly decided that it would be advisable for the Assembly to maintain an even closer check on the non-permanent members than that contained in the detailed scheme of the reorganization committee. Accordingly it introduced a provision, following on those already summarized and adopted with them, which said:

Notwithstanding the above provisions, the Assembly may at any time by a two-thirds majority decide to proceed, in application of Article 4 of the Covenant, to a new election of all the non-permanent members of the Council. In this case the Assembly shall determine the rules applicable to the new election.<sup>80</sup>

Thus the year 1926 ended with what appeared to be a very substantial triumph for the principle that the Council should be the executive organ of the Assembly in the matter of responsibility to the latter as well as in the matter of its authority to take independent action. In the space of a few hectic months five separate steps emphasizing the extent of Assembly control had been taken.

1. The elected members of the Council, originally placed by the Covenant in a minority of four to five and

<sup>80</sup> For complete text of these "Rules Dealing with the Election of the Nine Non-Permanent Members of the Council," see *Official Journal*, S. S. No. 43, October 1926, pp. 9-10.

later raised to a precarious majority of six to four, were now given the substantial majority of nine to five.<sup>31</sup>

2. The limitation of the increase in permanent seats to the case of Germany gave assurance that this privilege would be accorded most sparingly, and at the same time did much to end the war alliance aspect which had characterized the Council at first.

3. The constitutional amendment which is now paragraph 2 *bis* of Article 4 of the Covenant had been ratified, giving a two-thirds majority of the Assembly control over the election rules for non-permanent members, and over the conditions of their term of office and right to re-eligibility.

4. The Assembly had particularized this new-won power of general control by stipulating its right to replace all the non-permanent Council members at any time the requisite two-thirds majority deemed advisable.

5. The Assembly had by this last measure gone far towards confirming the doctrine of its continuous existence. No temporary or even intermittent organ has the power of decision "at any time." So far as the elected members of the Council are concerned, the doctrine of control by the Assembly is well established. It could now even be argued that these nine are not so much members of an independent chamber, but selected spokesmen of the Assembly filling a quasi-ministerial function on the

<sup>31</sup> In 1922 it was argued that increase of the non-permanent membership by two could be regarded as a mere anticipation of eventual increase in the permanent membership by three—Germany, Russia, and the United States. Compare League Document A. 119. 1922. See also Charles Howard-Ellis, *The Origin, Structure and Working of the League of Nations*, p. 140.

In view of the unanimity rule it may seem at first glance immaterial whether permanent or non-permanent members possess a majority on the Council. But without emphasizing the fact that the moral authority of a majority opinion may have very real practical effect, even where unanimity is a technical requirement, it is obvious that the argument cuts both ways. If it was significant that the permanent members were at first intended to compose a majority of the Council it is at least equally significant that they now hold only five of fourteen seats.



executive body, and always subject to recall by the parliamentary organ.

#### FURTHER SUBORDINATION OF COUNCIL SUGGESTED

President Wilson had suggested at Paris that "all actions of the Body of Delegates [Assembly] taken in the exercise of the functions and powers granted to them under this Covenant shall be first formulated and agreed upon by an executive council. . . ." <sup>32</sup> The incontrovertible comment of the legal adviser to the American delegation, as given at the time, was that "this language is extremely sweeping," wherefore Mr. Miller advised that:

It would be simpler to provide that the powers of the Body of Delegates shall be only those specifically granted in the Covenant, and in each necessary case when a power is granted, to limit *specifically* its exercise by the requirement of a precedent recommendation of the Executive Council. This would permit questions of procedure and such matters as are merely advisory . . . to be passed on by the Body of Delegates, and give them independently useful but harmless work to do. . . . Of course the control of the League must in reality be with the Great Powers. <sup>33</sup>

Much water has passed under the bridge, however, and pronounced has been the evolution of the League of Nations since the beginning of 1919, when the above passage was written. The outcome of the 1926 crisis was far different from the thesis that the function of the Assembly should be restrained to "independently useful but harmless work." In at least three respects it may be asserted that the events of that year brought constitutional changes of the first magnitude.

In the first place the ratification of the amendment to Article 4(2) of the Covenant enabled the Assembly

<sup>32</sup> See p. 39 above.

<sup>33</sup> Miller, Vol. II, p. 68.

to overrule a manifest intention of the framers of the League's Constitution—the intention that the Great Powers should be numerically superior in the Council.

In the second place this amendment enables the Assembly to regulate the non-permanent memberships by a two-thirds majority, which was an enlargement of existing exceptions to the principle of the unanimity rule, enunciated as a general requirement in Article 5 (1) of the Covenant.

In the third place the resolution of the Seventh Assembly—that “the Assembly may at any time by a two-thirds majority decide to proceed, in application of Article 4 of the Covenant, to a new election of all the non-permanent members of the Council”—was a very drastic interpretation of the Assembly's constitutional right to select four non-permanent members “in its discretion.” For herein, with no more justification than a mere resolution, the Assembly asserts the right to alter the composition of the Council at a moment's notice *even though every Great Power on the Council opposes such change* both in the Council and on the floor of the Assembly.

Nor is it possible to say that the evolutionary process has stopped short with the extension of Assembly control over the non-permanent Council seats. During the First Assembly the Argentine delegation had urged election of the entire Council by the Assembly, a thesis reiterated by its delegate on the committee for reorganizing the Council which met in 1926. In 1927, Professor William E. Rappard, who was for five years director of the League's Mandates Section and who has since served regularly on the Swiss delegation to the Assembly, also suggested the abolition of permanent Council membership, the reduction of the Council to nine or ten, and its annual or biennial election by the Assembly. Under this scheme

"a number of candidates equal to the number of Great Powers in the League" would be held to be indefinitely re-eligible to Council seats, but they could obtain them only by mandate of and on sufferance of the Assembly.<sup>34</sup> In the words of its proponent such a change would

. . . make the Council more responsive to the will of the Assembly and of public opinion. It would do away with the irritating distinction between elective and non-elective members, to which the resignations of Spain and Brazil were due. It would prevent the over-representation of certain political groups, from which the Council and the League are undoubtedly suffering today.<sup>35</sup> For all these reasons, it would enhance the moral authority of the League as a whole.

Somewhat similarly, another close student of League development—a French jurist of international distinction—has suggested as a means of weakening the unanimity rule that a single opponent of a majority vote by the Council might be compelled to take the issue to the Assembly, "which in the last resort would decide the legitimacy or non-legitimacy of the veto."<sup>36</sup> The practicality and the constitutional interest of these suggestions, of course, are different matters. What is significant here is that men of the standing of Professor Rappard and Professor Scelle evidently believe that there is nothing necessarily unconstitutional in further extensions of the Assembly's power over the Council.

<sup>34</sup> *Problems of Peace*, Second Series, Geneva Institute of International Relations, 1928, pp. 15-16. The suggestion was obviously a resuscitation of that made by M. Hymans to the Peace Conference Commission on the League. See p. 151 above.

<sup>35</sup> Professor Rappard suggested that the ease and regularity with which European allies of France have secured Council seats "may well, to a certain degree, explain the disaffection of her rival, Italy." He was speaking in 1928.

<sup>36</sup> Scelle, pp. 119 ff. The situation visualized actually led to the summoning of an extraordinary session of the Assembly in March 1932, though Professor Scelle's proposal would have convoked the Assembly much earlier in the Sino-Japanese dispute.

## THE RE-ELIGIBILITY ISSUE

It is obvious that the compromise settlement of 1926 was no more than the best mode of escape from an ugly predicament, that the changes were based on political rather than theoretical considerations, and that the Council is not yet to be regarded as having reached its permanent form. Yet it is equally plain that no immediate alteration in the fourteen-member, ostensibly two-group, system is to be anticipated.

The present arrangement resulted from the entrance of Germany into the League. *Ipso facto* one would expect the next move for fundamental revision when and if either of the two Great Powers still outside the League—the United States and Russia—decide to join. The right of the United States to a permanent Council seat was conceded from the beginning. That of Russia is not automatic, but could scarcely be questioned were proofs of her government's sincerity in co-operation available. As long as there is any prospect of one, or the other, or both of these Powers adhering to the League, a further drastic change in the Council involving their acceptance is highly improbable. And the situation is not really clarified if, for the sake of argument, one puts at the Greek kalends the date of entry of either of these Great Powers. There still remain the stronger possibilities of Brazil's return to membership and the entry of Turkey. It is a matter of common knowledge that the disposition of Council seats has played a prominent part in all the negotiations towards these developments. Meanwhile the Council has stabilized on its present basis, although the stability is precarious, and the present division between permanent, semi-permanent, and non-permanent seats admittedly unsatisfactory.

An important element of dissatisfaction is concerned with the issue of re-eligibility, with which is involved the doctrine of rotation of non-permanent Council seats.

Two decisions affecting the doctrine of re-eligibility were made by the 1926 committee on reorganization, and approved by the Seventh Assembly. As already noted these decisions were: (1) The right of continuous re-eligibility is not limited provided the State aspiring to that privilege can secure a precedent two-thirds majority of the Assembly entitling it to successive candidacies. (2) The Council shall not at one time contain more than three members thus re-elected. This number was selected to cover the cases of Spain, Poland, and Argentina, for the claim of the latter to semi-permanent Council membership in the event of its resuming full co-operation with the League was clearly anticipated in the 1926 negotiations. The provision, however, itself contains germs of future trouble, for if Argentina and Brazil should both return to active membership, one or other of them would have to be content with no more than a three-year Council term, provided both Spain and Poland continue to hold their seats.

The whole Assembly is by no means satisfied with the present intricate arrangement of a matter which the Covenant had originally left to its "discretion." This was indicated when the Seventh Assembly provided that "notwithstanding the above provisions the Assembly may at any time by a two-thirds majority" renew the whole panel of non-permanent Council members. But such drastic action is a reserve power the utilization of which can be anticipated only in difficulties of the most extreme nature. Nor is there need to invoke this resolution to establish a thorough rotation of non-permanent seats, if that is the Assembly will, for anything over a minority of one-third of this body acting in its capacity of electoral college can defeat a re-eligibility claim.

Evidence is available to show how the re-eligibility problem is working out in practise. It was first put to the test after Poland had obtained forty-five votes out

of a possible forty-nine in its candidacy for election to the Council by the Seventh Assembly. The Polish request for re-eligibility was immediately thereafter approved by the much smaller majority of thirty-six to eight, with five States absent or abstaining. At the Tenth Assembly, in 1929, Poland came up for re-election for the term of 1929-32 and led the ballot by obtaining fifty out of a possible fifty-three votes. This emphasized that the only contest in the case of Poland was that of the general right of a State to re-eligibility. The issue will be clear-cut if Poland seeks re-election for the second consecutive time at the Thirteenth Assembly, in September 1932.

The case of Spain, already noted, has so far paralleled that of Poland. Elected to the Council in 1928 by the votes of forty-six of the fifty nations represented in the Ninth Assembly, her claim to re-eligibility was the same day sustained by a vote of thirty-seven to ten, three States not voting. In this case, as in that of Poland, a group of thirteen countries actively or passively opposed the re-eligibility claim. A very few additional converts to that opposition would make the two-thirds majority necessary for re-eligibility exceedingly difficult to obtain. While Spain was re-elected in 1931 this candidacy received only forty-three votes out of fifty-three nations present. Domestic difficulties of the new republican government may have had some influence here, however.

Nor has re-eligibility always been granted when asked. Belgium, at the end of its term in 1927, and China, in 1928 and again in 1930, both requested a grant of re-eligibility which in each case would have meant almost automatic re-election. In all three cases the applicant failed to obtain the two-thirds majority necessary to sustain the claim.<sup>87</sup> In the case of China in 1928 rejection

<sup>87</sup> The Belgian request received twenty-nine favorable votes where the requisite was thirty-two. That of China in 1928 had twenty-seven supporters when thirty-four was two-thirds of the ballots cast, while its claim in 1930 received twenty-seven votes out of a requisite thirty-two. The

was given by the Assembly in spite of hints of a possible withdrawal from the League by the Nanking government should the request fail. It is equally to the credit of the Ninth Assembly that it ignored those hints, and of the Chinese government that it discountenanced efforts, domestic and foreign, to put them into practise.

Apparently, therefore, the two requests for re-eligibility granted by the Assembly in the first three years' operation of this rule must be regarded as exceptional; as the last fruits of the crisis of 1926, rather than as the first fruits of a new policy which has come to stay. There seems little doubt that in the normal case the Assembly will insist with increasing vigor on the rotation of non-permanent Council seats. If that is the development, it will steadily tend to strengthen a constitutional responsibility to the Assembly on the part of the Council.

#### LIMITS TO THE DOCTRINE OF ROTATION

The table on page 374 shows the thirty Powers which have had representation on the Council up to and including its sixty-sixth session, in January 1932. By that time a little over half of the entire League membership had held office on the Council, the following twenty-seven member States having as yet had no representation thereon:<sup>88</sup> Abyssinia, Albania, Argentina, Australia, Austria, Bolivia, Bulgaria, Costa Rica, Denmark, Dominican Republic, Estonia, Haiti, Honduras, Hungary, India, Latvia, Liberia, Lithuania, Luxemburg, Mexico, New Zealand, Nicaragua, Paraguay, Portugal, Siam, South Africa, and Switzerland.

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normal three-year waiting period having expired, China became automatically eligible for re-election in 1931, and led the ballot with forty-eight out of a possible fifty-three votes. The Nanking government sought the right of re-eligibility a year earlier in order to further its claims to possessing unrivaled authority in its own country.

<sup>88</sup> Brazil and Costa Rica have withdrawn from the League; fifty-five States therefore compose the present membership.

In this list there are a few States possessing a greater political, economic, and cultural importance than some of

COUNCIL MEMBERSHIP, JANUARY 1920—JANUARY 1932

Member State	First Represented	Sessions Represented	Sessions Represented as Percentage of All Council Sessions
British Empire <sup>a</sup> . . . . .	January 1920	66	100
France <sup>a</sup> . . . . .	January 1920	66	100
Italy <sup>a</sup> . . . . .	January 1920	66	100
Japan <sup>a</sup> . . . . .	January 1920	66	100
Spain <sup>b</sup> . . . . .	January 1920	55	83
Belgium . . . . .	January 1920	46	70
Brazil . . . . .	January 1920	40	61
China <sup>b</sup> . . . . .	February 1921	29	44
Germany <sup>a</sup> . . . . .	September 1926	25	38
Poland <sup>b</sup> . . . . .	September 1926	25	38
Czechoslovakia . . . . .	March 1924	19	29
Sweden . . . . .	January 1923	19	29
Uruguay . . . . .	January 1923	19	29
Chile . . . . .	September 1926	15	23
Roumania . . . . .	September 1926	15	23
Canada . . . . .	September 1927	14	21
Cuba . . . . .	September 1927	14	21
Finland . . . . .	September 1927	14	21
Venezuela . . . . .	September 1928	13	20
Persia . . . . .	September 1928	13	20
Greece . . . . .	January 1920	11	17
Colombia . . . . .	September 1926	10	15
Holland . . . . .	September 1926	10	15
Jugoslavia <sup>b</sup> . . . . .	September 1929	10	15
Peru <sup>b</sup> . . . . .	September 1929	10	15
Guatemala <sup>b</sup> . . . . .	September 1930	6	9
Irish Free State <sup>b</sup> . . . . .	September 1930	6	9
Norway <sup>b</sup> . . . . .	September 1930	6	9
Salvador . . . . .	September 1926	5	8
Panama <sup>b</sup> . . . . .	September 1931	2	3

<sup>a</sup> Permanent member.

<sup>b</sup> Non-permanent member at the time of the sixty-sixth session.

those which have already had representation on the Council. But it must be remembered that for most of these there have been valid reasons to prevent earlier Council



membership. Argentina would certainly have been elected early to the Council had she cared to regularize her position as an active member of the League. Mexico did not join until 1931. It was 1927 before the right of a British dominion to hold membership was tacitly admitted by the election of Canada. In the early years of the League, Austria, Hungary, and Bulgaria, though quickly admitted to the Assembly, were under the handicap of being defeated Powers, regarded by the Council as wards rather than as potential colleagues.

About the only countries remaining having a claim to membership above suspicion on the grounds of international influence are Denmark, Portugal, and Switzerland. It is to be noted that all of them are small in population, that all are in Europe, which continent has from the outset been over-represented from any purely geographic viewpoint; and that Switzerland, as the neutralized Seat of the League, is regarded by many as a State which can without sacrifice dispense with the honor of a Council seat—an honor which the Swiss government, mindful of its historic neutrality, is not particularly eager to acquire. Denmark will sooner or later be elected as a candidate of the Scandinavian bloc and arrangements will doubtless be made to give Portugal its turn, though evidently not as soon as that country holds to be its due. Indeed there are very few States, and these very secondary Powers, which must be visualized as having little or no chance of election to the Council, now that Salvador and Panama have sat in the seats of the mighty.

Moreover, there are certain reasonable limits to a thorough-going application of the doctrine of rotation of Council seats, limits which have been brought within the immediate horizon by raising the number of non-permanent members to nine, of whom three are elected annually. From some viewpoints it might be logical for the Assembly in one year to elect Albania as the Euro-

pean, Siam as the Asian, and Haiti as the American newcomers to the Council. But such simultaneous recruitment from uninfluential States would inevitably materially affect the repute and standing of a theoretically august body. It is no defense of imperialism to state the obvious fact that none of these three countries—and there are other League members in similar case—is within the realm of foresight likely to show itself a factor of far-reaching influence in the modern world. Is the accepted doctrine of the legal equality of sovereign nations to be carried to the point where Abyssinia and Liberia should be given the same authority on the Council of the League as the British Empire or Italy? In the Assembly the vote of the Dominican Republic, with a population of less than one million, already counts for as much as the German ballot, representing a mandate from sixty-three million people. If the same sort of "democracy" is to be imposed on the Council it will certainly cut deeply into its authority, prestige, and practical value, even though the character of the individual representative there is to some extent coming to be a factor comparable with the power of the State in whose name he holds a seat.

#### THE REACTION IN THE COUNCIL

The tendency of the Assembly steadily to extend its authority over the Council, giving the latter some of the aspects of a responsible cabinet rather than those of a wholly independent Second Chamber, comes readily to light. What is not so obvious is the very natural tendency of the Council to resist this trend. It does not do so openly and with speech-making, but by the tacit device of dividing its considerations into two parts: that on the agenda, which is discussed and settled or side-tracked in the full, acknowledged Council of fourteen; and that not on the agenda, which is coming more and more to be

handled by an inner and unrecognized Council composed of the five permanent members. Once observed the trend is unmistakable, but it is difficult to discern at first because it does not seem, as is the reality, a development directly connected with the Council's enlargement so much as a continuation of the conference system which was carried on by the principal Allies during the chaotic period immediately after the war.

Before Germany entered the League it was in the main a natural process for the Supreme Council or the Conference of Ambassadors to decide among themselves the disposition of problems arising out of the Treaty of Versailles. When, as early as March 10, 1921, Germany protested to the League against the Franco-Belgian occupation of Duisburg, Ruhrort, and Düsseldorf, it would have been admirable if the Council had at least investigated the justice of the plea.<sup>89</sup> But in view of the pariah condition of Germany at that time, and the fact that then France and Belgium themselves composed two of the eight members of the Council, impartial intervention by that body was probably too much to expect. Moreover, the Council in these early days was largely composed of men who had no immediate influence over the foreign policy of their own countries, personifying the secondary position which it held in European diplomacy of the immediate post-war years. In 1921 and 1922 there were several sessions in which not a single prime minister or foreign minister attended.

With the admission of Germany to permanent membership and the general amelioration of post-war psychology which that event reflected, it became legitimate to expect a development of the Council in accord with its authority under Article 4(4) of the Covenant to "deal at its meetings with any matter within the sphere of

<sup>89</sup> *Official Journal*, May 1921, pp. 265 ff. Compare also Karl Wachendorf, *Zehn Jahre Fremdherrschaft am deutschen Rhein*, 1918-28, p. 106.

action of the League or affecting the peace of the world." So far as personnel is concerned a great development *has* taken place. Even before the German entry European members of the Council were beginning to be represented at its meetings by their foreign ministers, while in the case of extra-European members it was getting to be the rule for the most experienced ambassador or minister in Europe to serve as delegate. The assiduous interest shown by Dr. Stresemann in the work of the Council served to confirm the tendency to make this body actually what it was at the outset expected to be—a periodical conference of those who have the conduct of vital international political relations in their keeping.

#### NORMAL PROCEDURE OF THE COUNCIL

The agenda of this periodical conference, however, falls far short of the importance which might be expected from the character of its leading participants. The schedule for the ordinary Council session will contain an average of some thirty prepared items, each of which is presented by an assigned member acting in the capacity of *rapporteur*.<sup>40</sup> In the majority of cases the report on the particular subject has been drafted and put in form by the appropriate division of the Secretariat, the approval of the Council member nominally in charge having been given in a perfunctory or critical manner according to his temperament, knowledge, and interest in the particular issue. Occasionally the Council *rapporteur* will nowadays use his national aides in drafting a report, making the Secretariat assistance secondary.

At the beginning of each Council session, and perhaps two or three times during the course of the session,

<sup>40</sup> Nominally there are four regular sessions of the Council annually. That of September, which is twice the normal length, is counted as two although a continuous sitting for most of the members. The change comes when the non-permanent members elected by the current Assembly take their seats, and those whom they replace step out.

ordinarily of a week's duration, private meetings will be held. At these are discussed such matters as methods of procedure; appointments of arbitrators for particular disputes; appointments of members of special commissions or technical committees; changes in the personnel of the Secretariat; consideration of action advised by the Secretariat in delicate political issues; and the occasional international crisis of secondary importance (such as the Bolivia-Paraguay dispute of December 1928) which has flared up too suddenly for full inquiry and recommendation by the Secretariat.

The result of all this careful preparation is that the public meetings are generally a matter of routine, devoid of interest except to the spectator for whom the whole setting is a novelty. There are likely to be at each session of the Council a few subjects on which sharp and stimulating debate may be anticipated. In the sessions following Germany's accession to membership the issue of minorities was generally a case in point. But in probably 90 per cent of the items on the formal agenda, procedure is of the cut-and-dried variety.

The President calls for the specific report which has been reached in the order of agenda. It is read by the member who has been appointed *rapporteur* for the field in which that subject falls. The report is terminated by a draft resolution which has previously been formulated in the Secretariat and negotiated between the interested Powers. This draft resolution is normally adopted without discussion and the next item of business takes its place. Sometimes a report on a complicated subject will take ten or fifteen minutes in the reading. Further time is occupied in translating French to English or vice versa—two translations when the German representative is *rapporteur*, since as a point of etiquette he always speaks in his own tongue.

If the subject under discussion is one "especially affecting the interests" of a League member not represented on the Council a representative of that country is called to the Council table<sup>41</sup> and states the viewpoint of his government, generally at a length designed primarily to secure adequate publicity at home. In cases where strength of feeling shows that agreement is manifestly impossible the subject will be held over, after the expression of a general principle. The Secretariat will then endeavor to assist the parties in opposition to work out a satisfactory compromise prior to the next Council session. But these delays only serve to conceal the essential swiftness of the Council procedure. Whenever possible the path is cleared so that this ponderous steam roller can operate along its beaten track with surprising speed.

#### TRIVIALITIES ON THE AGENDA

In part the celerity with which the Council works may be put down to an efficient technique, obviously essential if it is to continue to count as members statesmen of the first importance who are already over-pressed by imperious duties in their own capitals. In part it comes from the stereotyping of normal functions. And in part speed is forced on the Council by the relative trivialities with which the program of each session is encumbered.

From fear lest the sovereignty of the Great Powers should be in some way infringed the framers of the Covenant directed to the Council tasks and duties which seriously interfere with its efficacy as a political instrument. At the outset of the League there was a tendency to regard the Assembly as an unknown, rather dangerous quantity, and the Secretariat as an international clerical

<sup>41</sup> In accordance with Article 4(5) of the Covenant. One of the functions of the permanent delegations now maintained at Geneva by many League members is to see that the national case is ably put when a non-member of the Council sits as a member *pro tem*.

force which might or might not prove competent to rise above the work of stenography and documentation. The course of evolution has mightily changed this outlook, but on the Council still falls the burden of approving every appointment of any importance, of ratifying every promotion in the Secretariat, of scrutinizing—in theory at least—every detail of League activity.

Even though much of this phase of the Council's work has long ceased to be anything but automatic confirmation of decisions actually made in the Secretariat, the formalities still waste valuable time and energy. It would be deemed absurd if the President of the United States should ask his cabinet whether or not the University of Oregon might receive an exchange professor from Australia. Perhaps no less ridiculous is the frequency of such items as that which figured on the agenda of the fifty-third Council, raising the question of whether or not the League should accept:

Four thousand dollars from the American Council on Education to enable the Institute for Intellectual Co-operation to revise and issue a second edition of the handbook on *University Exchanges in Europe*.<sup>42</sup>

#### THE DEVELOPMENT OF AN INNER CIRCLE

On top of the hypertrophic effect of these minutiae has come the problem raised by the extension of Assembly control, illustrated in the increase of the non-permanent members from four to nine and the resulting *alourdissement* of the Council.<sup>43</sup> A criticizable, but none the less natural, effect of this has been to forward the

<sup>42</sup> Many seemingly trivial minority cases, particularly those of German minorities in Poland, slip through the Secretariat filter to demand formal reports to the Council. For example, the "Petition of September 5, 1930, from Frau Pauline Sock, relating to the admission of her son, Ewald, to the Minority School at Ruda. . . ." (*Official Journal*, February 1931, p. 227.) The creation of a permanent minorities commission, with adequate authority, would greatly lessen the burden on the Council in this respect.

<sup>43</sup> Compare Scelle, pp. 112 ff; Ray, pp. 175 ff.

tendency towards the formation of a cabal of Great Powers within the Council.

The unanimity rule, which is naturally the more obstructive the larger the Council, further fortifies this trend. So does the necessity of wasting time on trivialities in the scheduled Council sessions. So does that strong tradition of European diplomacy which finds it very difficult to interpret the phrase "concert of Powers" as meaning something more than a concert of Great Powers. So does the fact that all of the permanent European members (France, Germany, Great Britain, and Italy) are now usually represented on the Council by their foreign ministers, while all of the non-permanent Council members from outside Europe have as their spokesmen diplomatic envoys with far less power to make decisions binding on their governments. In short, it is much easier to understand why the Council has developed an inner circle than it is to see how to avoid a trend which is surreptitious, debilitating, and injurious to League prestige.

"The real work of the League," wrote General Smuts in his *Practical Suggestion* of December 16, 1918, "will be done by its Council, whose constitution and powers ought therefore to be very carefully considered. This Council would have to be a comparatively small body, as it is not possible to have executive action taken and most difficult contentious administrative work done through a large body." With the theory that the Council should be small and should concentrate on executive activities all of the framers of the Covenant were in accord, though some of them maintained that the Great Powers only should be represented while others stood out for the minority representation of small Powers which finally won through. Had anyone suggested at the Peace Conference that the Council should be organized as it exists today, there is little doubt that the idea would have been thrown out as unworkable. Time has proved that the



present form is not unworkable, but that is very different from saying that devices used to ease its operation are healthy for the League.

The difficulties which have attended the enlargement of the Council were foreseen. As early as 1922, when the number of non-permanent members was raised from four to six, though then with the idea that "nevertheless an eventual increase of the number of permanent members would re-establish the principle of which Article 4 is the application,"<sup>44</sup> there were those who had prophetic insight as to the eventual outcome. Among these was Professor A. H. Struycken (Netherlands) who told the Assembly that to increase the membership of the Council would be to weaken its constitutional authority and slow down its activities:

The preliminary work of the officials and experts will gain in importance and in influence. It cannot yet be said whether the system of sub-committees will be introduced or extended, or whether there will evolve what the English call an "inner circle."<sup>45</sup>

That which a few blessed with prevision were able to foresee in 1922 had become a matter of common observation five years later. During the Eighth Assembly several delegates of smaller Powers commented freely on the development of the inner circle tendency in the Council. In the words of Mr. Jonas Löfgren, then Swedish minister of foreign affairs:

If the newspapers and the accounts of various interviews which have taken place are to be credited, burning political questions have been discussed here at Geneva at meetings at which only certain members of the Council were present. Of course, nobody would think of blaming statesmen for discussing separately problems which directly concern their own country, even if such problems come within the competence

<sup>44</sup> *Official Journal*, November 1922, p. 1199.

<sup>45</sup> *Records Third Assembly*, plenary sessions, p. 223.

of the League. But, frankly, last year's experience was not such as to dispel the apprehensions of those who, at the last Assembly, expressed the opinion that an increase in the membership of the Council would enhance the danger of important political questions being withdrawn from its competence and transferred to an inner circle of representatives of certain Powers.<sup>46</sup>

#### EXAMPLES OF INNER CIRCLE ACTIVITY

Problems which drew general attention to the Council cabal were those of reparations and the Rhineland evacuation, both of which could most properly have been placed before the full Council by its authority under the Covenant to deal with matters "affecting the peace of the world."

Theoretically, the League Council would have been an ideal body to appoint the international committee of experts who gathered in Paris in February 1929, to work out what its sponsors fondly hoped would be "a complete and definite settlement of the reparations problem." Instead the Reparations Commission, semi-defunct after the initiation of the Dawes plan, was momentarily re-invigorated to name the delegates already selected by their respective governments. The substitution seemed the more unnecessary since it was the representatives on the Council of the British Empire, France, Germany, Italy, and Japan, plus a Belgian spokesman, who during the Council sessions of September 1928 evolved the principles underlying the procedure later followed in Paris. It is ironical that while the full Council was considering the subject of a \$25,000,000 stabilization loan for Bulgaria, five of its members as individuals were taking decisions involving the commercialization of a German debt at that time still nominally fixed at \$33,000,000,000.

As with reparations, so with the issue of complete evacuation of the Rhineland prior to the stipulated treaty

<sup>46</sup> *Records Eighth Assembly*, plenary sessions, p. 46.

date of 1935. None of the many war-time problems inherited by the League was more paradoxical than the military occupation of a member State by troops of three of its fellow members for nearly four years after that country was by unanimous vote of the Assembly deemed to have given "effective guarantees of its sincere intention to observe its international obligations."<sup>47</sup> The only valid argument defending the continuation of that occupation after 1926—the assertion that it was necessary for French security—was in itself an admission that the issue came within the proper scope of the Council.

But French insistence on the treaty connection between the Rhineland and reparations issues kept the former also outside the consideration of the Council. And during successive sessions of that body Briand, Chamberlain, and Stresemann as foreign ministers sought earnestly to find a Rhineland compromise in Geneva hotel rooms while at the Council table they solemnly considered such weighty matters as the appointment of the governing body of the International Educational Cinematographic Institute at Rome.

It may properly be objected that of the cases cited above the first had to be handled independently of the Council because at this time the United States government would have no association with the Council, and yet had to be consulted before any action could be taken on the reparations problem. It may also be said that Rhineland evacuation was an issue concerning only the principal signatories of the Treaty of Versailles, though this argument is less effective from the fact that the Covenant is also a part—Part I—of the same treaty. Further, it may be noted that many neutral governments were perhaps as eager to keep clear of tangles inherited from the war as were the former Allies to keep them from "butting

<sup>47</sup> One of the conditions of admission to the League laid down in Article 1 (2) of the Covenant.

in." But if the neutrals had been asked to treat these tangles as the thoroughly international problems they proved to be, probably there would have been few refusals to give impartial assistance.

There is no doubt that the abstention of the United States, and the persistence of treaty issues regarded by certain Council members from a thoroughly nationalistic viewpoint rather than in what may be called a League spirit, co-operated to make the "inner circle" development more natural. But there are other factors involved. The development was not pronounced until the Council was enlarged to fourteen members, and it is found in issues which have no direct connection with the war. For instance the fifty-eighth session of the Council, held from January 13-16, 1930, was first called ahead of schedule and then compressed into four days instead of the normal week so that it should in no way interfere with the London Naval Conference. And the chief activity of that session was not found in anything discussed at the Council board, but in the conversations preliminary to the Naval Conference held in private by the leading delegates. Again, one of the first steps taken by the Council in handling the Sino-Japanese dispute was to establish a committee of five (France, Germany, Great Britain, Italy, and Spain) which served as a policy committee for the whole organ. During the visit of Secretary Stimson to Geneva in April 1932 the Council's inner circle, excluding Japan, was hastily assembled to confer with the American Secretary of State at the Seat of the League. There was no move to summon the legally constituted Council for these conversations.

It is easily possible, of course, to criticize unduly this diplomatic inner circle of the Council. A great deal of constructive action is possible as a result of the private meetings of leading statesmen of the principal Powers under the ægis of the League. The Council meetings pro-

vide responsible ministers and their technical advisers with the opportunity to come together quietly, to learn each other's viewpoints without undue publicity or glaring advertisement, perhaps to reach tentative agreement in a dispassionate, neutral atmosphere. But that argument has received more than ample emphasis. What needs more attention is the curious anomaly whereby the Council has often merely provided the opportunity—the excuse—for these exchanges of views instead of being, as originally expected, itself the agency through which these personal contacts are established.<sup>48</sup>

#### DEFICIENCY OF THE INNER CIRCLE TENDENCY

There is, of course, a fundamental weakness in the "inner circle" tendency much deeper than its effect of making the Council as a whole a body of secondary importance and deceptive appearance. When the Great Powers achieve agreements for which the Council meetings at Geneva serve as a convenient screen, the Council itself derives a fictitious credit therefrom. Conversely, an acute disagreement among the Great Powers reveals a pusillanimity and helplessness on the part of the entire Council which is the more emphasized because inner circle agreements have been credited to the whole organ in the past. A danger which was always inherent was only brought to the surface by the Sino-Japanese hostilities which started with the seizure of Manchuria in the autumn of 1931.

This was not a case in which the concert of Great Powers could sit in judgment on a weak transgressor, nor one which the "Big Five" could solve by private negotiations. It was, on the contrary, the long anticipated test case in which one of the most powerful League members openly defied its Council colleagues. The strength of the inner circle tendency was shown by the

<sup>48</sup> Compare *Parliamentary Papers*, Cmd. 151, p. 13.

effort to obtain full co-operation from the United States in order to compensate the withdrawal of Japan. And when this proved only partially obtainable the inability of the Council to overcome the legal limitations of the Covenant became obvious. Not counting the Great Powers, and aside from China, the Council membership at the time included Guatemala, the Irish Free State, Yugoslavia, Norway, Panama, Peru, Poland, and Spain. The defection of a single member of the Council's inner circle outweighed for practical purposes the presence thereon of these eight governments. With its inner circle shattered there was little majesty left to the "political instrument endowed with greater authority than any the world has hitherto seen." A Council based on the absolute necessity of accord between the Great Powers logically lends itself to a cabal of these Great Powers, and just as logically proves to be powerless when accord within the cabal is unobtainable.

The tendency to blame the inner circle development entirely on the enlargement of the Council, particularly noticeable among French commentators, is unconvincing.<sup>49</sup> The first effect of this enlargement has been to deprive the Council of its original aspect of a grouping of former Allies. The second effect, not wholly due to its present rather unmanageable aspect, has been to adumbrate an unacknowledged and uncontrolled "Super-Council" structurally akin to the organ visualized by those of the League's architects who in 1919 wanted to see Council membership confined to the Great Powers. The indications are that something of this aspect, though not so pronounced, would have been found if the non-permanent membership had never been increased from four to nine. The unwillingness of the Great Powers to

<sup>49</sup> In this general connection Ray asserts that "*Tout le blâme retombe sur les auteurs de l'élargissement du Conseil*", p. 186. Compare also Scelle, p. 119.

submit issues that vitally affect their interests to consideration by a jury of their legal peers has fundamentally nothing to do with the number of non-permanent members of the Council.

In 1919, when four non-permanent members were added by the Peace Conference, it was decided that the Council should not be merely a concert of the Great Powers. In 1926 the decision of 1919 was drastically reaffirmed and emphasized. If the result has been to provoke a tacit revolt against truly co-operative consideration of international problems on the part of the Great Powers, the weakness revealed goes far deeper than errors of omission or commission made by the Assembly. Enlargement of the Council has only sharpened the problem by showing that mechanical alterations cannot solve it. With a Council of five, eight, ten, or fourteen the major difficulty of the organized world community is still the same as that which confronted the weak national governments of the feudal period—the control of the “over-mighty subject.”

## CHAPTER XI

### THE EVOLUTION OF THE COUNCIL

The experimental status of the Council during the early years of the League is revealed in ways other than the changes in its composition discussed in the preceding chapter.

During the first four sessions of the Council—Paris, January 16; London, February 11–13; Paris, March 12–13; Paris, April 9–11 (all in 1920)—little attention was paid to the question of organization. The order of the day consisted largely in the making of administrative appointments (for the Saar Territory and Danzig) entrusted to the Council by the Treaty of Versailles and in planning preliminary steps towards the establishment of the World Court and the Technical Organizations of the League.

Not until the fifth Council session, held in Rome, May 14–19, 1920, were formal rules of procedure governing the operation of the body agreed upon.<sup>1</sup> Herein it was laid down that the agenda for each Council session should be decided upon at the preceding session, though members of the League are entitled during the interim between sessions to have subjects placed on the forthcoming agenda, and new items may even be added in the course of a session "if a majority of the members of the Council represented at the meeting give their consent." These, and less important internal regulations, were put into force and have so remained. But several of the rules

<sup>1</sup> "Rules of Procedure of the Council of the League of Nations," League Document 20/31/39A. At the second session of the Council a "Draft Order of Procedure" prepared by the Secretary-General was introduced (*Procès Verbal*, Annex 4) but was referred to a drafting committee without action.



established at Rome have ceased to command strict observance, in at least two cases for reasons of political opportunism.

#### THE COUNCIL MAY MEET ANYWHERE

The first of these is that which provided that the Council should meet at the Seat of the League and that only "in special circumstances"—i.e., an emergency meeting—should it be convened elsewhere than Geneva. None of the first ten sessions of the Council were held at Geneva, the Secretariat not being established there until November 1920. But from the beginning of 1921 it began to be customary for this body to convene in the now famous "glass room" of the Secretariat Building. With the single exception of the emergency meeting called at Paris in October 1925 to handle the Greco-Bulgarian crisis, every session from the thirty-third to the fifty-second inclusive—from the end of 1924 to the end of 1928—was held at Geneva. It began to appear that the rule for meeting at the Seat of the League was firmly in force.

Actually, arguments favoring occasional sessions elsewhere were gaining ground. It was pointed out that when a Council meeting is held in an important capital it arouses more interest and receives more publicity in that country than do the Geneva sessions. Meanwhile, the newspapers of other countries do not diminish their attention because of removal from Geneva. Other propaganda values for the League in having the Council go on tour were examined and found impressive. Some of the leading delegates maintained that the strain of the quarterly meetings, as was then the normal calendar, would be less exacting if their scene were more frequently varied.

The opportunity to set the precedent of holding regular meetings away from Geneva was provided by Dr.

Stresemann, or rather by his physicians, at the end of 1928. Throughout that year the health of the famous German foreign minister had been precarious and his medical advisers refused to let him risk the inclement December climate of Geneva. In consequence, the German government suggested that the fifty-third session of the Council should be held at Lugano, a pleasant lake resort on the Swiss-Italian border, close to but not to be confused with its better-known sister town, Locarno. The other members of the Council naturally agreed promptly to a request for a shift based on these motives and, at an additional cost to the League of about one thousand dollars per diem, a session voted successful by everyone except the Geneva hotel proprietors was held in the Lugano Kursaal.

At the expense of the Rules of Procedure,<sup>2</sup> change of venue in the Council sessions was thus re-established, and while the next one was held at Geneva, that of June 1929 (the fifty-fifth) was summoned at Madrid. When the Spanish government cancelled its resignation from the League it let it be known that a Council meeting at Madrid would be appreciated. And there, in spite of the expense and extreme inconvenience to the Secretariat of assembling the requisite documents, personnel, and experts so far from base, the session was held. The next Council session summoned away from Geneva was the emergency meeting to consider the Sino-Japanese dispute, convened at Paris in November 1931. For reasons of economy alone it is to be expected that the majority of Council sessions will henceforth be held at the Seat of the League, but the right to meet anywhere—including American or Asiatic centers—is reserved and can be expected to be utilized whenever the political desirability is sufficiently strong.

<sup>2</sup> Unless the phrase "special circumstances" is very broadly interpreted.

## THE COUNCIL HAS NO EXECUTIVE HEAD

Another of the Council's original Rules of Procedure, tacitly dropped in the early years, is the one (Article 4) which provided that:

The president and the vice-president will be elected by the Council from amongst its members by secret ballot and by a majority. They will hold office for one year.

If the president or vice-president ceases, for any reason, to be a representative on the Council of the League of Nations, the Council will hold a fresh election.

The representative on the Council who has filled the office of president or of vice-president for one year is not eligible in the following year either as president or as vice-president.

This arrangement was never put into effect.<sup>3</sup> During the first ten sessions of the Council the chair was taken by the representative of the country in which the session was held. At the eleventh session, held at Geneva under the presidency of M. Hymans (Belgium) :

On the proposal of M. Léon Bourgeois, the Council decided to maintain the rotary system for the presidency, and that this should be established in future according to the alphabetical order [in French] of the members. The presidency would, however, be given first of all to the representatives of Brazil and of Japan, who had not yet held this office.<sup>4</sup>

Beginning with the fourteenth session, accordingly, the office of president has rotated from member to member at each regular session, following the French names of the countries represented. An emergency session is presided over by the man who was president at the preceding session.

As for the vice-president, he is non-existent, an abstraction even more rarified than that of the similar func-

<sup>3</sup> A provision in Article 14 of the Rules of Procedure provided that Article

<sup>4</sup> "shall only take effect after adoption of a special resolution by the Council."

<sup>4</sup> *Procès Verbal*, eleventh Council session, p. 41.

tionary in an American bank. Since the president, instead of being selected as an individual, has become the representative of the nation whose turn it is for the position, there is no longer any need for the deputy office. If the president is unable to fulfill his duties another appointee of his government may replace him. Failing that, the country which comes next on the list alphabetically provides the temporary chairman, which is about all the office amounts to now.<sup>5</sup>

The presidency of the Council was reduced to a routine formula because the original members were jealous of each other and fearful that an elected executive might arrogate too much power to himself, particularly by exercising his office during the periods between sessions. The device of automatic rotation does not seem to have been intended as a permanent arrangement, but as an uncontroversial stop-gap satisfactory while the Council was feeling its way through untrodden constitutional fields towards a permanent basis of organization. Successive additions to Council membership, however, have resulted in giving a durable stamp to what was at first only a convenient compromise, a result which is found in other phases of League development. It is natural that the non-permanent Council members should prefer the definite and open rotation of the presidency to an election system which would mean rotation by tacit agreement, and probably among the representatives of the Great Powers only.

<sup>5</sup> At the opening of the fifty-ninth session of the Council: "M. Zumeta reminded the Council that the chair should be taken at the present session by the representative of Venezuela. Unfortunately, a recent operation prevented him from fulfilling his duties. M. Marinkovitch, the distinguished representative of the Kingdom of Yugoslavia, had been informed of this situation and had, with great courtesy, agreed to take the chair during the present session. M. Zumeta hoped that the members of the Council would accept the arrangement. The representative of Venezuela would naturally take the chair at the following session. *The proposal was adopted.*" (*Official Journal*, June 1930, p. 496.)

## CONSEQUENCES OF EXECUTIVE DEFICIENCY

As has been pointed out, the Council, lacking any real executive head, has been forced to see normal presidential responsibilities vest, in effect, in the hands of the Secretary-General. The consequent enlargement of the power of that permanent official, and the diminution of the vitality of the Council, is perhaps not superficially apparent. But it is quite clear that as the presidency of the Council shifts by schedule from the representative of Panama to that of Peru (an actual though random instance) its prestige is going to be less than when it rotates from the representative of the British Empire to that of France. It may not be in accord with democratic theory, but it is none the less a fact, that if an international emergency arises between or even during Council sessions, the chance of its being effectively handled in the crucial initial stage is much better if the presidency is then held by a Great-Power spokesman.

Foreign Minister Briand of France happened to have presided over the Council session prior to the sudden eruption of the Greco-Bulgarian dispute in October 1925. Being president until replaced at the next regular session he immediately convened an emergency Council meeting at Paris, and what might easily have been another Balkan war was promptly liquidated. By chance Briand was also president when the Bolivia-Paraguay trouble flared up during the Lugano session of the Council, in December 1928, and his signature on admonitory telegrams to the disputants meant a great deal, even in distant South America.

When Japanese troops occupied Mukden, in September 1931, the Spanish representative, Foreign Minister Lerroux, was serving as president of the Council. Technically he, or another Spaniard, should have continued to hold that office during the special session convened at

Geneva in October. In fact, the chair was then taken by M. Briand. The French Foreign Minister continued to preside at the meetings devoted to the Sino-Japanese crisis, both in Geneva and at Paris, until his retirement from the French government. Briand was then replaced by M. Joseph Paul-Boncour, who remained as president of the sixty-sixth Council session, when it was the alphabetical turn of France to have the chairmanship.

In spite of the system of rotation, therefore, a tendency is arising to have the Council directed by an experienced Great-Power representative during emergency periods. This new tendency, however, has not prevented the absence of dependable executive authority from having had important constitutional effects in the past. A case in point was the Szent Gotthard incident of January 1928, concerning the attempted smuggling of machine-gun parts of Italian origin into Hungary.

Mr. Cheng Loh, the Chinese minister at Paris, had presided over the Council during its regular session the preceding month and was in consequence counted as its president until the representative of Colombia would automatically replace him at the March session. On February 1, the Czechoslovak, Roumanian, and Yugoslav governments formally requested the Secretary-General to have the incident considered at the next meeting of the Council, pointing out that supervision of the disarmament clauses of the peace treaties had come to be vested in that body. The question was placed on the agenda of the March session, but in the meantime the Hungarian government proceeded to make the confiscated war material useless for military purposes and announced its intention of selling the scrap by auction.

Under the prompting of M. Briand, Mr. Cheng thereupon sent a telegram, through the Secretary-General, informing the Hungarian government that it "would be prudent to suspend this action, as the matter is shortly

to be considered by the Council." To this Count Bethlen, the Hungarian premier, tartly replied that the auction would be held as scheduled, but that "as a matter of personal courtesy to the President of the Council," the Hungarian government would "ask the purchasers not to remove their purchase."<sup>6</sup> While Budapest undoubtedly complied with the peace-treaty obligations by destroying the war material, that very action rendered abortive subsequent League investigation into the origin, destination, and concealed circumstances of the shipment. This was virtually admitted by the Council in its June (1928) session. And under the terms of a resolution passed then the Secretary-General is instructed, in any case submitted to the Council involving preservation of the *status quo*, to direct the attention of interested parties to a clause of the resolution which says:

The Council considers that, when a question has been submitted for its examination, it is extremely desirable that the governments concerned should take whatever steps may be necessary or useful to prevent anything occurring in their respective territories which might prejudice the examination or settlement of the question by the Council.<sup>7</sup>

It is no reflection on the person of Mr. Cheng, who through alphabetical exigencies was serving as president of the Council at a time when the Peking government he represented was virtually non-existent, to say that the Hungarian government would in all probability have taken a more co-operative course if the foreign minister of a Great Power had been executive of the Council in February 1928. In that case the constitutional importance of the Council presidency would have revived. But as the Szent Gotthard incident worked out, powers which were originally designed for the executive of the Council

<sup>6</sup> For full texts of these telegrams and for general discussion of the incident at the forty-ninth session of the Council, see *Official Journal*, April 1928, pp. 548-49 and 387-97.

<sup>7</sup> *Official Journal*, July 1928, p. 909 (fiftieth session of the Council).

have been formally delegated to the Secretary-General of the League. It is he who has come to represent the Council during the forty-six weeks of the year when it is normally not in session.<sup>8</sup> And while the Secretary-General is of course responsible to the Council it remains true that the failure of that body to create an effective *ad interim* organization has resulted in an extension of Secretariat powers unforeseen by any of the framers of the Covenant.

#### SURRENDER OF BUDGETARY AUTHORITY

An atrophy of function at first exercised is found in the way in which the Council has surrendered its original powers of budgetary control to the Assembly. Beyond providing a method, soon found unworkable, for apportioning League expenses among the members, the Covenant as adopted had no provisions governing financial administration.<sup>9</sup> Advances from the British and French governments covered the eight-month period of organization prior to the first session of the Council which, on January 16, 1920, tacitly assumed fiscal responsibility. In the rules of procedure adopted by the Council at its Rome meeting in May of that year two articles dealt specifically with budgetary control. The more important of these (Article 11) read:

Before the last quarter of each year the Secretary-General will present a draft budget for the following year, for approval by the Council.

The Council will present, as soon as possible, the draft budget it has approved, together with its report, for final approval by the Assembly.

<sup>8</sup> While not continuously in session during the Assembly period, the Council is then in position to be convened at a moment's notice.

<sup>9</sup> Article 6(5) of the Covenant. The history of the assumption of financial control by the Assembly is given in some detail in Chap. XIII.



Should it be impossible to obtain in time the final approval of the budget by the Assembly, the Council may declare the budget it has passed applicable and effective from the beginning of the year, pending approval by the Assembly. This approval must be applied for as soon as circumstances permit.

The intention that the Council should not merely closely scrutinize the budget, but also reserve the power to declare it effective without prior sanction of the Assembly, is here clearly manifest. It proved, however, an intention which was never carried into effect. Partly this was because later decision to hold the Assembly meetings annually eliminated need for giving the Council budgetary powers. Undoubtedly, also, the surrender of function was partly due to a belated realization that since only the Assembly represents directly all those who are taxed to provide League finances, the Assembly alone should in justice control this financing. But less tangible causes also played a role. The membership of the Council has been composed for the most part of diplomats and politicians (albeit in the best sense of the word) and its incompetence to pass judgment on technical fiscal matters should have been obvious from the beginning.

At the outset the estimates prepared by the Secretariat were given a formal and perfunctory Council approval. In 1922, following the *Noblemaire Report*, the Supervisory Commission was appointed by the Council and functioned as its agent in examining and criticizing the League budget until, in 1929, this commission was made an Assembly organ.<sup>10</sup> On Secretariat request the Council frequently makes transfers of minor items within the budget schedules already approved by the Assembly. It may also authorize recoverable expenditure which does not exceed the current treasury surplus, in the event that this expenditure comes under general estimates already

<sup>10</sup> The steps whereby the Assembly took control of the Supervisory Commission are examined in detail on pp. 525-41 below.

approved by the Assembly.<sup>11</sup> But with the budgetary estimates themselves the Council now has no concern, although it doubtless retains a theoretical power to approve the estimates as they come from the Secretariat and Supervisory Commission.

The Assembly has taken to itself complete control of League finance, a fact which was openly admitted when, at the fifty-sixth session of the Council (on September 6, 1929), this body decided that it should hold regular meetings every four months instead of quarterly. This has meant the holding of regular sessions in January, May, and September instead of in March, June, September, and December, as was the practise from the beginning of 1921 until the end of 1929.<sup>12</sup> While the annual budget of the League was before 1930 placed on the Council agenda at each June session it is administratively impossible to prepare the budget in time for a May session. In the words used by the Secretary-General: "The consequence of a decision by the Council to reduce the number of its sessions would therefore seem to be that it would forego the opportunity of presenting observations on the budget."<sup>13</sup> In spite of this plain warning the Council, accepting what was really a *fait accompli*, abandoned its June session.

#### REDUCTION OF SCHEDULED SESSIONS

It is difficult to see how this reduction in the number of Council sessions can in itself be regarded as other than an

<sup>11</sup> Compare *Financial Regulations of the League of Nations*, Article 33(2). See also, as an instance of authorization of recoverable expenditure, *Official Journal*, July 1931, pp. 1067 and 1154-55.

<sup>12</sup> At its twenty-sixth session, on Aug. 31, 1923, the Council definitely established the dates of its sessions; namely, on the Monday immediately preceding Dec. 10, Mar. 10, June 10 in each year, and three days before the meeting of the Assembly. They are now scheduled for the third Monday in January, the second Monday in May, and three days before the Assembly meets in September.

<sup>13</sup> *Official Journal* (Annex 1165), November 1929, p. 1648.

indication that the role of the Council in the League has become one of lessened importance. The step was not taken lightly, having first been formally raised by the representative of the British Empire (Sir Austen Chamberlain) at the session of March 1927, two and one-half years before its eventual adoption. And the fact that the change was only made after all its implications had been so carefully examined is itself significant. The proposal at first met with widespread antagonism, eliciting from Chamberlain, during the June 1927 session, the following defense of the idea:

He was unable to understand how the interests of the Assembly or any of the members of the League could be prejudiced by the proposal to hold three regular Council sessions in the year instead of four. He felt that it had been of no small importance to the Council that in recent years an increasing number of its representatives had been the ministers charged in their own country with the conduct of international relations. The presence of so many ministers directly responsible for the policy of their own countries in international affairs increased the influence and authority of the Council and facilitated the taking of decisions which might otherwise have involved references to governments and consequent delays. In this way they had served the interests of the Council and of the League. It was, however, very difficult for ministers of foreign affairs to leave their posts four times a year to attend meetings at Geneva and it might therefore become necessary for them, if four annual sessions were held, to nominate others to take their places at the Council table.<sup>14</sup>

Opposition, however, was not stilled by this argument. At the 1927 Assembly hostility was shown to a reduction in the number of Council meetings because it was felt that such action would slow down the whole machinery of the League. Some Secretariat officials, already perturbed by previous transmissions of function from the Council, argued that the step would be a curious contrast to the manifest and continuous growth of League

<sup>14</sup> *Official Journal*, July 1927, pp. 758-59.

responsibilities. Certain members of the Council itself were lukewarm towards the proposal, realizing that one of its effects would be to increase the pressure of routine business on the full body and strengthen the tendency of the inner circle to take to its charge political problems of the first magnitude. In a private meeting of the forty-eighth session M. Scialoja (Italy) permitted himself the cynical observation that: "If the Council wishes to reduce the number of its sessions to three, it had better do it and not say it. Probably, nobody would then notice the reduction in the number of sessions, whereas if the Council announced such a reduction, the question would become a constitutional one."<sup>15</sup>

Sir Austen, however, on the same day returned ponderously to the charge. He was convinced that:

For the conduct of the foreign policies of their own countries as well as for the authority and practical working of the League, it was desirable for as large a number as possible of foreign ministers to come either to the Council or the Assembly. Obviously, a foreign minister had a larger discretion than the government was probably willing to allow to any other representative that it could send, and that larger discretion might at times be of considerable consequence in the proceedings either of the Council or the Assembly. He was anxious, therefore, to preserve the practice which had grown up as regards the attendance of foreign ministers at Council sessions and this was his real motive in suggesting a change in the number of sessions of the Council.

Chamberlain's thesis that it is better for all when foreign ministers talk *to* each other at Geneva, rather than *at* each other from their respective capitals, could arouse no disagreement. But the suggestion had a further significance. We may pass over the point that during the Council membership crisis of 1926 the activities of certain foreign ministers, among them Chamberlain himself, had not notably "increased the influence and authority of

<sup>15</sup> *Official Journal*, February 1928, p. 142.

the Council." More important was the fact that by this time the Council was composed of fourteen members of whom at least five, by open understanding, were to be non-European. For foreign ministers of countries three weeks or more distant from Geneva, attendance at three Council meetings a year would be no easier than attendance at four. For these countries Chamberlain's remarks implied that the real work of the Council is largely independent of their participation. In effect, the remarks quoted above defined the value of the Council as a reincarnation of the Concert of Europe—a periodic junta of the foreign ministers of the Great European Powers sitting in judgment on the political state of the world.

Of greater significance from the viewpoint of the position of the Council in the constitutional structure of the League was the considered opinion of the Secretary-General, given at this meeting on December 7, 1927, and supported later by successive memoranda. "From the administrative point of view," he said, "a reduction in the number of annual sessions to three would not hurt the work of the League." In other words, the administrative activity of the Council had come to be so much a matter of routine and even retroactive approval for action already taken by the Secretariat, that a 25 per cent reduction in the number of its sessions, coincident with a large expansion of general League activity, seemed immaterial. On the political side of the issue, the Secretary-General said, he did not wish to express an opinion although it was, in his view, "a much more important factor."

While additional debate on the issue followed at later Council meetings,<sup>16</sup> the concise summation of the situation given by the Secretary-General on December 7, 1927 was not improved upon. It was essentially because the Council has only a formal administrative significance, but

<sup>16</sup> See *Official Journal*, October 1928, p. 1658, and January 1929, p. 10.

a very real political value, that the number of its scheduled annual gatherings was by its decision of September 6, 1929 reduced from four to three, counting the sessions of the Assembly period in each case as a single session, and not considering the potential emergency sessions which of course may still be convened at any time. Two years later it could be said without fear of contradiction that the administrative efficiency of the League had in no way been injured by the change.

#### COUNCIL AND ASSEMBLY ARE COMPLEMENTARY ORGANS

Over a wide front, then, the Council has surrendered ground which, so far as they had thought the subject through at all, the framers of the Covenant intended should be the domain of the League's "central organ." Encroachment has come both from the Secretariat and from the Assembly. The difference, broadly speaking, is that extension of authority by the former has been generally due to, or necessitated by, reasons of efficiency; while the broadening of Assembly control, aside from the logic of entrusting financial supremacy to the fully representative organ, traces in some respects to mistrust of Great-Power diplomacy and the desire for individual or national aggrandizement among the representatives of the less important nations. On the whole, the permanent Council members have not resented the changes which have so profoundly modified the misty outline originally sketched. The most important evidence of resistance is found in the cabal development, already described. And this, it may be emphasized, reflects a desire to keep political rather than administrative authority in the hands where both were originally placed.

Moreover, the temptation to regard the Council and Assembly as rival organs, set in opposition to each other on a system of check and balance, must be confined within rigid limits. Fundamentally the two bodies can

never be hostile, must always be complementary to each other, for anything weakening to the prestige of the one can scarcely fail to be injurious to the dignity of the other. Many diagrams, some exceedingly complicated, have been drawn to give visualization of the connections between the League's constituent parts.<sup>17</sup> But so far as the Council and Assembly go, the simplest sort of geometrical design will also prove most accurate. Picture two concentric circles, the outer one representing the Assembly, the inner one the Council, and the relationship between the two is down on paper. Within the smaller circle, if desired, an inmost one representing the cabal can be drawn, shaded to show that it is an extra-legal and informal grouping over which the League has no control.

While the tendency of the League's evolution has certainly been to contract the authority of the inner circle from a functional viewpoint, the compression has coincided with a growth in the influence of the Council, due to the appointment of important national representatives thereon by the five permanent members. Although it no longer attempts to handle all the multitudinous duties at first vaguely anticipated, those handled are generally given firmer and more expeditious treatment. Moreover, it must be remembered that in a strict geometrical picturization the Council today would occupy actually and relatively a larger part of the area than was the case in 1920. Then, only about one-sixth of the nations represented in the Assembly held Council seats. Today, though League membership has increased, the fraction has risen to one-fourth. To see any fundamental antagonism between the smaller and the larger body when the members of the former head one-quarter of all the delegations in the latter would be a rather forced viewpoint, even without the consideration that before the

<sup>17</sup> As in C. B. Fry's study, *Key-Book of the League of Nations*.

League is a quarter of a century old virtually all its members should, under the rule of rotation, have held Council seats and acquired something of the Council viewpoint.

#### DEFINITION RATHER THAN SURRENDER OF FUNCTION

The structural changes in the Council, discussed in the preceding chapter, have made that body seem more amorphous in its constitutional aspect than is actually the case. The framers of the Covenant, in their anxiety to safeguard the sovereignty of the Great Powers, attributed to the Council responsibilities which it was not expected to fulfill as a distinct organ of government.<sup>18</sup> To the definitive obligations, such as those contained in Articles 8(2), 8(5), 14, and 22(7) of the Covenant, other duties were added by the peace treaties, the minorities treaties, and subsequent international engagements. Under Chapter I of the statute for the Permanent Court of International Justice the Council even shares with the Assembly an electoral function.

It is small wonder, therefore, that when the League first got under way nobody knew whether the Council would best stand comparison as a modern revival of the old Concert of Europe; as an international house of lords, in which the Assembly might raise a few members to a term of peerage; or as an executive cabinet of the Assembly guaranteed against overthrow by a perpetual lease of office. At one time or another each of these three aspects has been uppermost and something more than a flavor of the two first named still remains. The course of evolution, however, has been to make the cabinet aspect the most valid, though reservations to any exact comparison on this basis must be made here and will be discussed

<sup>18</sup> Articles 9 and 22(9), for instance, provide for the establishment of permanent advisory commissions to aid the Council in its executive work on armaments questions, and in its supervisory work on mandates.



later.<sup>19</sup> From the constitutional viewpoint what has happened to the Council during its first decade is not a surrender of function so much as a definition of function which has involved some curtailment of the original general design.

This definition confirms the original estimate of the Council as the executive organ of the League. The enormous growth of League activities and the consequent necessity of decentralization have forced the Council, openly or tacitly, to pass numerous duties over to its Technical Organizations and advisory committees, as well as to the Secretariat and to the Assembly. But in nearly every case of this sort the Council preserves its authority in latent form. League procedure is sometimes so long and involved that those who are following its slow development may see no connection with the Council at all. Yet the connection is there, both in the power of appointment before the investigation could be begun and in the power of rejection of all the findings after it has been completed. And although its actions may often seem perfunctory, the Council fulfills one important definition of cabinet function by being the organ which assumes full and final responsibility, *vis-à-vis* the Assembly or *vis-à-vis* world public opinion, for all policies undertaken by the League.

Take, for instance, the unexciting case of an inquiry into the over-production of sugar. This is conducted by competent technical experts from the various sugar-

<sup>19</sup> Numerous general comparisons with familiar organizations have been made in an endeavor to define the character of League organs. For instance, the relationship between the Council and the Assembly is compared by Dr. Paul K. Walp to that of the board of directors with the general meeting of the shareholders of a corporation. (*Constitutional Development of the League of Nations*, p. 155.) Such efforts to find resemblances with pre-existing forms, while helpful for purposes of illustration, are always subject to the qualification that both Council and Assembly are organs without precedent in either political or commercial history.

producing countries. They are appointed by the League's Economic Committee, which in turn has been named by the director of the Economic Relations Section of the Secretariat, after lengthy consultation with his colleagues and advisers. The appointment of these experts, however, had no official significance until authorized by the Council and the field of their inquiry can at the outset be limited in any way that the Council may deem proper. Any suggestions for League action made by the technicians, moreover, must first be approved by the whole Economic Committee and then incorporated into its general report to the Council, there to take the risk of being indefinitely tabled if for any reason any member of the Council thinks the recommendations politically inadvisable. For, under the unanimity rule, it is not merely the Council as a body, but any one of its fourteen members, which may block action recommended through a technical organ of the Secretariat. And behind the Council lies the Assembly—the parliamentary organ of the League—which has either given the sugar inquiry formal sponsorship in the first instance, or else retroactively approved action to that effect taken by the Council.

#### THE *RAPPORTEUR* SYSTEM

The evolution of the Council towards a cabinet status has been forwarded by the *rapporteur* system under which the responsibility for supervision of the League's various activities is divided among the different members. Each representative may thus become something of a specialist in the particular line allotted to him, and business is expedited by the reliance which can be placed on the special knowledge of those who hold their seats through a number of consecutive sessions. During the year 1931–32 (September to September) the division of

regular, recurring subjects among the Council members was as follows:

Financial questions . . . . .	Norway
Economic questions . . . . .	Germany
Communications and transit . . . . .	Poland
Public health . . . . .	Irish Free State
International law . . . . .	Italy
Finances of the League . . . . .	Guatemala
International bureaus . . . . .	China
Mandates . . . . .	Jugoslavia
Minorities . . . . .	Japan
Armaments . . . . .	Spain
Supervision of the Saar . . . . .	Italy
Supervision of Danzig . . . . .	Great Britain
Intellectual co-operation . . . . .	France
Illicit traffic in narcotics . . . . .	Jugoslavia
Traffic in women and children . . . . .	Panama
Humanitarian questions . . . . .	Peru
Child welfare . . . . .	Irish Free State
Refugees questions . . . . .	Peru

Like many other aspects of the Council's work its utilization of the *rapporteur* system has not yet crystallized into final form. It was inaugurated at the second session of the Council, but the establishment of the doctrine of rotation of non-permanent seats has interfered with its development by breaking continuity. It may be quite logical for Guatemala to replace Cuba as occupant of the non-permanent seat allotted to the Caribbean area, but it does not follow that the Guatemalan representative is immediately able to fulfill the duties of *rapporteur* on the subject which his Cuban predecessor has been handling. The representatives of the Powers holding permanent seats are not all equally anxious to assume the extra work involved in specializing on a particular subject. For instance, in the list given above, the French representative has no settled responsibility proportionate to his power and influence in the Council. During the period of M. Briand's activity, there was an obvious tendency to make

him in fact the standing *rapporteur* on international political crises, even though that office is not specified and could scarcely be assigned in advance to any particular Council member.

Some representatives on the Council have proved ideally fitted to supervise the particular field allotted to them and have continued to handle it year after year. To others subjects are assigned almost at random, sometimes successfully and sometimes not.<sup>20</sup> League custom prescribes that a mandatory Power shall not provide the *rapporteur* on mandates, that the German representative shall not be placed in charge of reports on the Saar and Danzig, that a non-European spokesman shall handle minorities questions, and that armament issues shall not be reported upon by a national of a leading military State.

The fact that the President of the Council is merely a temporary presiding officer, selected by the alphabetical rotation of the names of the nations represented, is always to be remembered. One result of this is that after some fumbling with the subject the selection of *rapporteurs* has been placed in the hands of the Secretary-General, subject to a Council approval which is generally purely formal. A consequence of this division of function is

<sup>20</sup> Untried members of the Council experience a sort of "hazing" process by being given relatively unimportant yet disagreeable tasks to test their ability for more responsible posts. After the appointment of the newly elected Persian representative as *rapporteur* on the finances of the League the following amusing colloquy—according to the *Official Journal* of October 1929, p. 1652—took place in private session of the Council:

"His Highness Mohammed Ali Khan Foroughi noted that the representative of Persia was entrusted with certain financial questions. He agreed to that arrangement, but hoped that his acceptance did not imply that he would have to report on those questions for all the three years during which Persia would be a member of the Council.

"The President assured the representative of Persia that the proposed arrangement was for one year only."

This particular assignment, as being one in which the Council has now surrendered virtually all authority, is generally allotted to the outstanding "greenhorn" among the new members.

that nobody is responsible if some particular *rapporteur* proves incompetent for his job.

Such cases, though not infrequent, are not outwardly obvious for the simple reason that the appropriate Secretariat agency will attend to every detail of the preparation of reports whenever desired. All that the representative needs to do is to present "his" summary and recommendations at the public Council session after all the work has been done for him in the Secretariat. Since the sixty-third session of the Council even the public reading of the reports has been dispensed with, except when they deal with controversial issues.<sup>21</sup> It is unusual nowadays for a Council *rapporteur* to be both so ignorant of and so uninterested in a subject assigned to him as to let the report prepared for him pass as a pure formality. But such cases have tended to become more frequent with the enlargement of Council membership and, if the *rapporteur* is satisfied, his colleagues seldom raise objection unless the report in question happens to be one which directly affects the vital national interests of some member. In this way the enlargement of the Council has resulted in shifting a good deal of the direction of policy from the League's Council to its civil service.

On the other hand, the increased membership of the Council has enabled it to handle many questions no less efficiently and much more impartially than was the case with that body in its original form. The foreign ministers of the Great Powers lend prestige to the Council, and casual visitors to its session are invariably thrilled by seeing men whose names are known to every newspaper reader sitting like ordinary human beings around the famous horseshoe table. But events have shown that statesmen of this prominence are often too burdened to be good *rapporteurs* on important technical questions, and sometimes too entangled in the complex meshes of

<sup>21</sup> *Official Journal*, July 1931, p. 1068.

their respective national policies to be above suspicion where controversial international issues are at stake. For the actual functioning of the Council as a vital part of League machinery a man like Hjalmar Procopé of Finland may prove more valuable than one with a much more familiar name. Perhaps the best *rapporiteurs* the Council has possessed have been Senator Scialoja of Italy and Viscount Adatci of Japan, who combined the continuity of office afforded by permanent seats with great personal ability and freedom from the obligations of foreign ministers. Men like these, instead of relying on the Secretariat to draft their reports, will frequently use the machinery of their own governments to go deeply into the study of an issue with the consideration of which they are entrusted.

With the efficient departmentalizing of the Secretariat the Council member assigned as *rapporteur* to some particular subject has found himself able to rely implicitly on the comprehensiveness and fairness of the reports which are normally prepared for him to submit to the Council. He should show interest in his subject; he must have at least a general knowledge of its political implications. But it is no more necessary for him to be an expert in the particular field than it is for the member of any national administration to be an unquestionable authority in the field of his ministry.

In short, the trend towards cabinet status on the part of the Council has been offset by the development of the executive function in the Secretariat. The former tendency would have been much more pronounced if Article 4 of the Council's Rules of Procedure, calling for an elected president, had ever been made effective. In that case there would have been a clearly defined administration under the direction of a single man—presumably a Great-Power representative—in whom would have been focused executive responsibility during the periods in

which the Council is not in session. This president would have built up for his office a great deal of the authority which, lacking a rationally chosen guiding head in the Council, has now gone in more or less concealed form to the Secretary-General. In the guise of *rapporteurs* the President of the Council might then have named his own cabinet to be the political heads corresponding to the Secretariat sections, of which the directors must now be regarded as ministerial officers rather than as permanent civil servants.

What has actually happened, however, is that the Secretary-General has in effect been made the permanent executive officer as well as the secretary of the Council. Thereby effective liaison has been established between the Council *rapporteurs* and the appropriate section directors, the two groups which really divide executive function. More by chance than by design the League has evolved two ministerial bodies. That composed of the higher political appointees in the Secretariat is responsible both to the Council and to the Assembly, whose power to exercise control over the Secretary-General and his principal officers is intermittent but unquestionable. The quasi-ministerial function built up by the Council, on the other hand, is exercised without responsibility to the Secretariat. The extent to which it is controlled by the Assembly will be made clear in the chapters on that organ.

#### TREATY RESPONSIBILITIES OF THE COUNCIL

It must not be thought that a comprehensive responsibility of Council to Assembly is assured because cabinet functions in the former organ seem to have become fairly well defined. The Council is by no means entirely dependent upon the good-will and support of the Assembly. It has certain special duties, some of them of the highest importance, which make it an entirely distinct

and separate political body. And it is because of these duties that, in the case of the Council more than that of any other League organ, the greatest care must be taken in drawing analogies with established and familiar constitutional forms.

In the Covenant as adopted at Paris no general distinction is drawn between the powers of Assembly and Council. Article 2 indicates that they are on an equality as instruments to effect the action of the League. Article 3(3) and Article 4(4) use identical wording in stating that each "may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world." When the British representative, Mr. A. J. Balfour, reported to the eighth session of the Council on "relations between the Council and the Assembly" he thought it advisable to preface his somewhat inconclusive observations with the following negative statements:

It is clear, in the first place, that the relations between the Council and the Assembly have no resemblance whatever to the relations familiar in constitutional practice between an upper and lower parliamentary chamber—between a senate and a house of representatives. It is clear, in the second place, that these relations have no resemblance to those which subsist between a legislature and an executive. It is clear, in the third place, that while a large number of the functions entrusted to the League of Nations by the Covenant might be exercised either by the Assembly or by the Council, there are a certain number which can only be exercised by the Council, with the assent of the Assembly.<sup>22</sup>

In the last clause of this statement, regardless of the denial of a legislature-executive relationship found a few lines above, is the cue to the development of cabinet function in the Council which has taken place since the date of the adoption of this report (August 2, 1920). Where-

<sup>22</sup> A more detailed discussion of the subject of joint competence is found in Chap. XIII.



ever there is joint competence, and under the wording of the Covenant the field for it seems practically unlimited, the history of the League indicates that an extension of Assembly authority will coincide with an extension of executive function on the part of the Council, or on the part of organs to which it may delegate that function. Entirely aside from the Covenant, however, there are many responsibilities which are entrusted specifically to the Council—under the treaties of peace, the minorities treaties, the Locarno treaties, the engagements whereby the League undertook the financial reconstruction of certain European countries, and other minor post-war international conventions. In addition, Articles 34, 103, 289, 336, 338, 376, 379, and 386 of the Treaty of Versailles, with similar provisions in the other treaties of peace, not to mention Articles 11 (1), 23 (c), 23 (d), and 24 (1) of the Covenant itself, confer authority on *the League of Nations* without specifying any particular organ of the League.

#### JOINT COMPETENCE CUTS BOTH WAYS

In 1920 this ambiguity gave rise to a controversy which had an outcome of considerable constitutional significance. In fulfillment of Article 34 of the Treaty of Versailles a plebiscite (under Belgian supervision) had been held in the former German districts of Eupen and Malmédy, the results of which were communicated by the Belgian government to the League of Nations. The article stipulated that "Belgium undertakes to accept the decision of the League" with reference to this plebiscite, and by a Council resolution of September 20, 1920 the transfer of these territories to Belgium was recognized as definitive. It may be recalled that the Council membership at this time was composed of Belgium herself, six other States which had been at war with Germany, and

one neutral Power (Spain), represented by its ambassador in Paris.

The legality of this action was promptly denied by the German foreign minister, Dr. Simons. In a letter to the Secretary-General dated October 2, 1920, Dr. Simons pointed out:

In all cases where the Treaty of Versailles provides for a decision by the League careful discrimination is made between the cases to be decided by the Council of the League, and those to be decided by the League itself. . . . Since the treaty has been drafted in this special form, there can be no doubt that in all cases where the provisions of the treaty refer to the League of Nations itself, it is not the Council which by these provisions is invested with competence. It is the opinion of the German government that, in these cases, competence can clearly only belong to the supreme organ of the League, that is to say, to the Assembly.<sup>23</sup>

Thereupon the Council, on October 20, 1920, at its tenth session (in Brussels), responded that the fact of special obligations entrusted to the Council by the peace treaties:

. . . does not imply that where the League of Nations is mentioned without any qualification, the competence of the Council, as laid down by Article 4 of the Covenant, is restricted. Where there is no special indication to the contrary, the legal competence of the two organs of the League is identical.<sup>24</sup>

This admission of identical competence on the part of the Council and Assembly wherever powers are attributed merely to "the League of Nations," is of great theoretical, and may well come to be of great practical, significance. It would, for instance, enable the Assembly to supersede the Council as the organ empowered to appoint the High Commissioner of the League at Danzig, though supervision of this League protectorate has so far always been handled by the Council. It would entitle the Assembly

<sup>23</sup> *Procès Verbal*, tenth Council session, p. 91.

<sup>24</sup> The same, pp. 95-97.

to establish its own permanent committees to execute duties entrusted to "the League" under Articles 23 and 24 of the Covenant. It would even seem permissible for the Assembly, under the wording of Article 11 (1), to assume control in an international dispute contemporaneously with action by the Council. If the thesis of identical competence could be used to justify the exclusion of the Assembly from any part in the Eupen-Malmédy decision, the same thesis may in future be equally well invoked to exclude the Council from some field in which the Assembly desires full control.

#### FUNCTIONS INDEPENDENT OF ASSEMBLY CONTROL

There are, however, various administrative and supervisory functions which, by treaty regulations other than the League Covenant, have been entrusted specifically to the Council. Some of these, such as its duties with regard to the Saar Territory, are of a definitely temporary nature, and will in time be regarded as a passing incident in the long history which the League is entitled to anticipate.<sup>25</sup> Other supervisory duties, such as the control of execution of the minority treaties entrusted by them to the Council, are of a more permanent nature. In these functions, it is to be noted, the Council is relatively independent of Assembly control. Here it possesses the attributes of an independent commission or of a court of appeal, rather than those of a responsible cabinet.

Even here, however, the dependence of the Council on the Assembly is more concealed than absent. In its work of international administration or supervision the Council does not operate in direct contact with its subject matter.<sup>26</sup> It handles these activities through the intermediary

<sup>25</sup> Under Article 49 of the Treaty of Versailles the inhabitants of the Saar, in January 1935, "shall be called upon to indicate the sovereignty under which they desire to be placed."

<sup>26</sup> Compare Pitman B. Potter, *This World of Nations*, p. 186.

of the appropriate divisions of the League Secretariat, which is in constant touch with the actual field service. The Secretariat, however, is by no means independent of Assembly control, the command of finance by the latter organ giving it a final say in policy even when jurisdiction is not more directly exercised. In the last analysis dependence of the Council on the Secretariat means dependence of the Council on the Assembly, even though this indirect control by the Assembly may not be immediately apparent. For instance, impassioned argument on minority questions between German and Polish representatives at the Council table may make it appear that the Council itself is handling difficult problems of this sort *ab initio*. But the result of such flare-ups is, in the long run, some improvement in Secretariat technique for which the Assembly, whether by retroactive consent or prospective authorization, or by both, is really responsible. In the case of minorities, moreover, there is no special technical or advisory commission established to aid (which almost means supersede) oversight by the Council. Wherever there is such the administrative function of the Council tends to be reduced to an almost formal supervision.

A helpful clue to the investigator who is baffled by the seemingly amorphous character of the Council is furnished by Professor Rappard's classification of three leagues in one, dividing League responsibilities into the broad categories of (1) execution of the peace treaties, (2) promotion of international co-operation, and (3) prevention of war.<sup>27</sup> It is only in the first of these divisions that the Council possesses any large measure of complete independence as a League organ. In the second category the doctrine of joint competence between Council and Assembly holds sway, which means that in due

<sup>27</sup> See *International Relations as Viewed from Geneva* and *La Politique de la Suisse dans la Société des Nations*.

time the organ which has already achieved complete control of finance will probably make itself dominant. As for the "league to prevent war," the prerogative of the Council, as will be seen in the pages immediately following, is very strictly defined by the Covenant. The first of these three leagues, naturally, is contracting in its duties and dwindling in importance as the war of 1914-18 recedes into history. Germany's entry to the Council as a permanent member was symbolic of the winding-up of this phase of the League's development. And with the curtailment of that part of the League which was concerned with war liquidation has come the extension of Assembly authority in the broadening field which remains, and the tendency for the basic function of the Council to become clarified as the executive organ of the Assembly in this field.

#### THE SPECIAL FUNCTION AS GUARDIAN OF PEACE

The most important of the qualifications as regards the Council's position in the general League structure, remains to be considered. Whatever the development of the Council *qua* cabinet it will continue to have a special and imperative function as emergency guardian of the peace of the world. The importance attached to this function by the framers of the Covenant is shown by the fact that no less than seven articles of the twenty-six in that Constitution—numbers 10, 11, 12, 13, 15, 16, and 17—are concerned with the mediatory, arbitral, or punitive actions which the Council may take in behalf of the preservation of international peace.

The general development of the League, if it makes serious disturbance of world peace a less likely eventuality, may serve to mitigate the heavy responsibilities placed on the Council in this connection. But the responsibilities themselves will always remain, and the necessity of facing them squarely will increase as the

League gains in power and prestige. A well-established League, based on the Covenant as written, seems incompatible with such pusillanimity as was shown by the Council in September 1923, when it evaded clear-cut responsibilities by virtually surrendering control of the Corfu incident to the Conference of Ambassadors. Indeed, the mere existence of any such parallel body as a Conference of Ambassadors was incompatible with the Council's definitive duties as the authoritative executive organ of international political co-operation. In 1923, of course, the League was still in swaddling clothes, possessing far less actual power than the post-war diplomatic organization of the principal Allies. Eight years later, however, when the Sino-Japanese dispute flared out, the chief progress to be found was in the fact that the Council did not dodge its responsibilities, though still too weak to handle them effectively.

The development of the Council's technique in its function of guardian of the peace has been quite as involved and confused as the development of its executive role, still tacitly rather than precisely established. And two fundamental distinctions have made the technique in each case follow different directions. One of these roots in the fact that the League is not yet universal. In its cabinet aspect the Council need only concern itself with questions internal to the League, with administrative activities which are not a direct concern of governments outside the League circle, and to which such governments cannot therefore legitimately object. But as guardian of the peace, and as a guardian entrusted under Articles 16 and 17 of the Covenant with far-reaching punitive powers, the Council is always confronted with the danger of having to take action the direct effects of which will be external to the League, thereby creating unpredictable issues with Powers which have not deemed it advisable to become League members. The Council sitting as a com-

mittee for the prevention or suppression of war in any part of the world<sup>28</sup> is on much more delicate juridical ground than is the Council sitting as a committee to execute various co-operative policies of peace to which the League membership has already given at least implicit consent through its Assembly.

The second distinction underlying the different development of the Council as an executive organ and of the Council as guarantor of peace, results from a lack of balance in the Covenant. In their unanimous desire to avert any repetition of the World War the framers of the Covenant, sitting just after the conclusion of hostilities, developed therein detailed and meticulous instructions as to the course the Council should follow in the event of "any war or threat of war, whether immediately affecting any of the members of the League or not." On the no less vital matter of the constitutional organization of the League, on the other hand, the Covenant was in general entirely unspecific. The various viewpoints of its authors assisted the wise decision to avoid inflexibility in favor of the teachings of practical experience.

Accordingly, the Council has been able to work out the evolution of its cabinet functions by the old reliable system of trial and error. But as a body to guarantee world peace the Council has from the outset been hampered by rigid constitutional formulae which, particularly after the decision of the United States to abstain from League membership, have lacked harmonious relation to the political facts confronting the Council at any particular moment. In this connection the influence of the official American attitude towards the League can scarcely be exaggerated, particularly during the period when it was not merely a case of abstention but often one of definite antagonism.

<sup>28</sup> See Article 17 of the Covenant, especially its fourth paragraph.

In its constitutional function as the primary guardian of international peace the Council has, therefore, been faced with difficulties entirely beyond its own control. And these difficulties have been made the more perplexing because the Covenant sets forth meticulous instructions as to just what the Council—an entirely different Council from that which now exists—should do in every variety of international dispute. The result has been that, almost regardless of the Covenant, the technique in any particular emergency has had to be adjusted and even subordinated to the conditions of the situation.

#### LATITUDE OF COUNCIL PROCEDURE IN DISPUTES

It is undeniable that in a majority of the political disputes which have come before the Council, its work has been notably successful. In this category may be mentioned such instances as the settlement of the controversy between Finland and Sweden over the Aaland Islands; between Turkey and Great Britain over the Iraq frontier (Mosul oil question); between Greece and Bulgaria after hostilities had actually been started in October 1925; and between Bolivia and Paraguay during the Chaco dispute of December 1928, in the liquidation of which the Council played a prominent if not predominant part.

In some cases the intervention of the Council has resulted in relative if not actual failure, as in the Sino-Japanese hostilities, the Corfu incident, and the protracted dispute between Poland and Lithuania over the ownership of Vilna, although the Council can scarcely be blamed for weakness in this dispute, which arose before any of the League's institutions were really functioning. Occasionally, as in the outcome of the Upper Silesian plebiscite, the Council has sponsored a workable but far from uncriticized compromise.



There is no difficulty in finding favorable and unfavorable comment on the upshot of every political problem which the Council has solved, been baffled by, or evaded.<sup>29</sup> But the underlying fact is that in all these cases the Council has proceeded largely by rule of thumb. Procedure has been so pragmatic that for purposes of conclusion one is only justified in noting that the steady tendency has been to rely more and more on the elastic and conciliatory formula of Article 11, with Articles 15 and 10 as a second line, and Article 16 as a none too trustworthy last reserve. The Sino-Japanese dispute, which is given detailed treatment in the following chapter because of its profound constitutional importance, provides clear revelation of the Council's limitations as an agency for the preservation of peace.

It is both natural and desirable that actual practise should have altered and enlarged the original theoretical conception of the duties and powers of the Council acting in accordance with Articles 10 to 17 (inclusive) of the Covenant. Emphasis on the spirit rather than the letter of the Covenant has enabled the Council to utilize the principle of equity, to proceed on the assumption that its business is not merely to endeavor to preserve peace by a show of force which the League does not at present possess, and might well be ill advised to use if it had the power. The conception that the mere suppression of war is not enough unless procedure also takes into account the necessity of securing international justice, has played its part in the shifting of emphasis from Article 16 to Article 11 as the most vital part of the peace preservation machinery. As Mr. Conwell-Evans has shown in his careful study of the methods employed by the Council to prevent war and to settle international disputes, that

<sup>29</sup> A table of twenty-four disputes submitted to the Council from 1920-29, in pursuance of the terms of the Covenant, is given by T. P. Conwell-Evans, *The League Council in Action*, Appendix II.

organ has demonstrated its "recognition of the belief in the efficacy of prevention rather than of cure in the business of maintaining the peace of the world."<sup>80</sup> Only when every possible conciliatory measure has failed is the Council justified, at the present stage of international organization, in proceeding to bring pressure on the recalcitrant disputant.

It may be suggested that it is this growing utilization of the principle of equity on the part of the Council which has tended to place in its possession a judicial function which the Covenant apparently did not intend this organ to utilize in any pronounced degree. Articles 12(1), 13(1), and 15(1) all indicate a conception of antithesis between judicial examination and inquiry by the Council. Article 14, with its provision for advisory opinions from the Permanent Court of International Justice, "certainly seems to imply a sort of inaptitude on the part of the Council (and of the Assembly) in juridical matters."<sup>81</sup> While the Council has yet to ask the Court for an advisory opinion without following it, there is in theory no compulsion on this organ of the League to observe the judicial advice which it receives either in this or any other way. The Council is not a tribunal, but in certain circumstances it has the power to interpret laws and treaties.<sup>82</sup> Here, again, is a function which is very far from that of the executive cabinet in a national parliamentary system.

<sup>80</sup> The same, p. 45.

<sup>81</sup> Jean Ray, *Commentaire du Pacte de la Société des Nations*, p. 199.

<sup>82</sup> Compare Permanent Court of International Justice, Series B, *Opinion No. 6*, p. 25. The significant excerpt from the advisory opinion of the World Court in this case (Protection of German Colonists in Poland) was: "In order that the pledged protection may be certain and effective, it is essential that the Council, when acting under the Minorities Treaty, should be competent, incidentally, *to consider and interpret the laws or treaties on which the rights claimed to be infringed are dependent.* (Writer's italics.)

## ASSEMBLY COMPETENCE UNDER ARTICLE 15

On the other hand, the Council in its capacity of guardian of the peace may be pushed by the Assembly into action which it would otherwise have evaded, indicating that even in this field the principle of executive responsibility to the parliamentary arm has been established. There is ample constitutional warrant for assertion of authority by the Assembly in the field of peace preservation. Its theoretical competence under the first paragraph of Article 11 has already been noted. And under Article 15 (9) Assembly competence is clearly specified.

While the normal procedure is for disputes to go before the Council in the first instance, Article 15 (9) of the Covenant provides that: "The Council may in any case under this article refer the dispute to the Assembly"; and further that "The dispute shall be so referred at the request of either party to the dispute provided that such request be made within fourteen days after the submission of the dispute to the Council." Article 15 (10) then proceeds to give the Assembly, in the cases where it has been seized under the preceding paragraph, the same authority as is entrusted to the Council by the provisions of Articles 12 and 15, provided only that in any report on the subject made by the Assembly the Council members represented therein, exclusive of parties to the dispute, shall be unanimous.

The utility of Article 15 (9 and 10), which gives the Assembly power to keep a constant check on the Council in its special capacity as guardian of the peace, was first demonstrated in 1921. In June of that year the Albanian government, believing its territorial integrity menaced both by Yugoslavia and Greece, appealed first to the Council and then, when the Council had referred the dispute to the Conference of Ambassadors, to the Assembly.<sup>88</sup> At its fourteenth session the Council, in a very

<sup>88</sup> The history of this episode is outlined by Conwell-Evans, pp. 63-69.

significant decision, referred complete charge of the dispute to the Assembly, the conclusion of the *rapporteur*, as adopted by the Council being:

. . . The result of these two procedures [on the part of the Albanian delegation] is that the Assembly has been requested by Albania to deal with the determination of the Albanian frontiers, and the Council has been asked to prevent those frontiers being violated by the action of the Serbs. The two subjects are evidently intimately connected, and it seems absurd to send one of them to the Assembly and the other to the Council. I suggest, therefore, that as the Assembly has been requested by the Albanians to deal with the determination of the frontiers, that they should also be asked to deal with the violation of the frontiers.<sup>84</sup>

Thus placed in full charge of the controversy the Assembly acted decisively. On October 2, 1921 it adopted a recommendation with three parts. The first of these merely advised Albania to accept the decision of the Ambassadors' Conference regarding the limitation of her frontiers. But parts two and three were worded in the form of authoritative decisions, as in them the Assembly:

Requests the Council forthwith to appoint a commission of three impartial persons, to proceed immediately to Albania and to report fully on the execution of the decision of the principal Allied and Associated Powers, as soon as it is given, and on any disturbances which may occur on or near the frontier of Albania. The commission should have power to appoint observers or other officials being impartial persons to enable it to discharge its functions.

In order to provide for the carrying out of the above decision, the Secretary-General is instructed to include the sum of 100,000 gold francs in the budget of the League for the fourth fiscal period [1922], it being understood, however, that, before any of the said appropriation be expended, a detailed estimate shall be submitted to the Council of the League and shall be approved by it.<sup>85</sup>

<sup>84</sup> *Procès Verbal*, fourteenth Council session.

<sup>85</sup> *Official Journal*, S. S. No. 6, October 1921, pp. 35-36.

It will be noticed that while the Secretary-General was "instructed" by the Assembly, the Council was only "requested" to act. Nevertheless, on October 6, 1921, the latter organ, over some Italian opposition, proceeded to comply with the clearly expressed will of the Assembly, Mr. Balfour making the observation: "He was quite sure that the Council would make a great mistake if the Assembly could say that, in interpreting its wishes, it had weakened their expression."<sup>86</sup>

Thus, even in a field where the Council seems at first glance to have particular powers and privileges, the general principle of its obligation to execute the Assembly will, when instructed to do so, was early established. A valuable precedent was set by the Albanian incident, as was demonstrated when the Sino-Japanese dispute was referred to the Assembly at China's request more than a decade later.<sup>87</sup>

#### ASSEMBLY DIRECTION OF COUNCIL POLICY IN DISPUTES

The wide difference between the explicit theory of the Covenant and the opportunist practise of the Council under that Covenant was well brought out between the lines of a study of Articles 10, 11, and 16, made by the Committee on Arbitration and Security during 1928. For the technical details of this study reference should be made to the lengthy memorandum prepared by Dr. Victor H. Rutgers (Holland) who had the subject in charge.<sup>88</sup> The political conclusions, however, were summarized for the Ninth Assembly in a report brought in from its Third Committee by Nicholas Politis (Greece).

In this it was pointed out that any hard-and-fast definition of the terms "aggression" (Article 10) and "resort to war" (Article 16) entailed danger, since "it might

<sup>86</sup> *Procès Verbal*, fourteenth Council session, p. 122.

<sup>87</sup> See pp. 487-89 below.

<sup>88</sup> League Document C. A. S. 10, pp. 24-34.

oblige the Council and members of the League to decide that there had been a breach of the Covenant, and thus bring sanctions into play at a time when it would be better not to take measures of coercion." M. Politis further informed the Assembly that in the considered judgment of the Rutgers memorandum "the preparation of the military sanctions provided for in Article 16 did not seem likely to promote the growth of mutual confidence between the States members of the League unless, at the same time, pacific procedure were organized for the settlement of all international differences and a general understanding was reached for the reduction and limitation of armaments."<sup>39</sup>

The Rutgers memorandum, approved in its main conclusions by the Committee on Arbitration and Security, by the Third Committee of the Ninth Assembly, and, on September 20, 1928, by the Assembly itself in plenary meeting, is of great constitutional interest as an important case of direction of Council policy by the full parliamentary organ of the League. It was also an honest admission of a condition which the Council had previously been forced tacitly to recognize under the duress of circumstances. To the average individual it seemed that the bombardment and seizure of Corfu by Italian warships on August 21, 1923 was unquestionably an act of "external aggression" and probably also a "resort to war in disregard of its covenants" on the part of Italy. It is true that the pressure of external opinion focused through the League soon forced evacuation of Corfu, which the Italian government had perhaps intended to annex outright, but it is equally true that in spite of an apparent violation of the Covenant, nothing was done by the Council to bring Italy to book.

Since 1928, however, the Council's record in this incident has been retroactively cleared. The Assembly has

<sup>39</sup> League Document A. 63. 1928. IX.

agreed that the Council cannot always act according to the letter of the Covenant, that in varying cases varying methods, including perhaps submission of the problem to some extra-League agency for settlement, will be most efficacious, and that the Council will have been considered by the Assembly to have fulfilled its full duty under the Covenant and to the parliamentary organ if in every crisis it remembers that:

The League's first task is to forestall war, and that, in all cases of armed conflict or threats of armed conflict, of whatever nature, it must take action to prevent hostilities or stop hostilities which have already begun.<sup>40</sup>

#### OTHER LIMITATIONS OF COUNCIL'S SPECIAL FUNCTION

The doctrine is now well established that the functions of the Council in its capacity as guardian of the peace should be exercised along opportunist rather than doctrinaire lines, following the general guidance, rather than under the dictation, of the appropriate articles of the Covenant. This doctrine is in accord with the realities of present-day international organization and will hold true for at least as long as the United States hesitates to give full and reliable co-operation to the Council's work for the preservation of peace. It would, however, be a mistake to think that the tendency of the Council to modify its theoretically supreme position as arbiter of international peace is due solely to American abstention, or even to that plus inexperience and the various internal weaknesses of the League. The decentralizing tendencies which have already been discussed in connection with the ordinary executive work of the Council have been at least equally pronounced in that which touches its con-

<sup>40</sup> *Records Ninth Assembly*, plenary meetings, p. 115. It is apparent that the approval of the Rutgers memorandum by the Ninth Assembly does not in itself clear the Council of the charge of failure in the Sino-Japanese dispute. This issue is examined in the following chapter.

ciliatory capacity. And these tendencies are almost wholly due to policies duly approved by the Assembly.

The rapid development of the World Court, not in existence when the Covenant was drafted, has resulted in this organ taking charge of a steadily increasing number of disputes of a justiciable nature, either by direct submission or by indirect reference from the Council. The procedure chosen with respect to the proposed Austro-German Customs Union may be cited as one outstanding example. The scope of compulsory jurisdiction by the Court is steadily growing wider.<sup>41</sup> Conciliation and arbitration treaties sponsored by the League, of which the highest expression is found in the "General Act for the Pacific Settlement of International Disputes,"<sup>42</sup> continuously tend to reduce the enormous responsibilities prematurely loaded directly onto the Council under the Covenant. So do the increasing number of international conventions on specific subjects, of which the World Disarmament Convention is both the most difficult to achieve and the most fundamentally important from the viewpoint of safeguarding peace.

Through the entire League organism strong emphasis is laid on the desirability of preventive as opposed to curative action. Particularly in the traditional and newly developed danger zones of Europe, committees and commissions are perpetually at work endeavoring to smooth out tangled issues before they reach the stage of a definite threat to international order in the world community. The Council itself, through such agencies as its special

<sup>41</sup> By Jan. 1, 1932 thirty-six States had ratified the Optional Clause, binding them to accept the compulsory jurisdiction of the Court in the classes of legal disputes listed in Article 36 of its statute.

<sup>42</sup> League Document A. 86. 1928. IX. By Jan. 1, 1932 seventeen States—Belgium, Great Britain, Canada, Australia, New Zealand, Irish Free State, India, Denmark, Estonia, Finland, France, Greece, Italy, Luxemburg, Norway, Peru, and Spain—had acceded to the General Act as a whole. Sweden and Netherlands had also acceded to Chaps. 1, 2, and 4, omitting the compulsory arbitration chapter.



minorities committees,<sup>48</sup> does a great deal to remove difficulties in the embryonic stages rather than leave them to fester until mediation, arbitration, or more drastic methods would be necessary. When this preventive activity, still primarily European, has become world wide it will further tend to confine the work of the Council in its capacity of guardian of the peace to the early settlement of non-justiciable disputes, if there are any which can properly be called such, or to the solution of international difficulties before they reach the justiciable stage, if we maintain that there is really no such thing as a non-justiciable dispute.

#### RESPONSIBILITY TO THE ASSEMBLY

In general lines, then, the evolution of the Council in its various capacities is clear. Its functions as the executive organ of the League have developed slowly and haltingly because the question of its composition had first to be settled; because the Covenant left this whole constitutional sphere in indecisive form; and because the intermittent character of the Council has forced the Secretariat to build up an executive function, no less real for not being acknowledged.

The Council's functions as guardian of world peace, on the other hand, have been tacitly circumscribed, partly because the incomplete nature and physical weakness of the League forced evasion of duties made too rigid by the Covenant; partly because of legal weaknesses which undermine the apparent value of Articles 10 to 17; partly because the widespread machinery of peace preservation indorsed by successive Assembly sessions is lessening the probability of international crises; partly because the post-war world is turning increasingly to law, as exercised

<sup>48</sup> *Ad hoc* sub-committees of the Council entrusted with ameliorative action on minorities petitions forwarded from the Minorities Section of the Secretariat. For a full description of their duties see League Document A. 7(a). 1925, pp. 17-20.

through the World Court and other judicial instrumentalities, as a more desirable form of jurisdiction than the control of any political body. And a political body the Council is and will continue to be, no matter how exalted the statesmen composing its membership.

The evolution of the Council shows progression in its aspect of a responsible executive organ, retrogression in that aspect of supreme guardianship which at the outset had rather too much in common with the ideas underlying the old Concert of Europe. Looking beneath confusing surface tendencies, studying the development not in the light of this swing or that, but over the full course of League history, it becomes clear that neither tradition, nor dogma, nor even the narrow self-interest of the former Allied Powers, has been the principal guiding force in the Council's history. The development of the Council has been determined in part by practical experience, in part by pressure from other organs and instruments of League policy, in part by the dominant modern political theory. This, notwithstanding the seeming popularity of dictatorships, rigorously insists on acceptance of the doctrine of responsibility as the price for even temporary acquisition of authority. The Council has been made far more responsible to Assembly control than was anticipated would be the case at that early session when the former body condescendingly agreed that:

In order that the work of the League may develop to the maximum of power and usefulness, it remains for the Assembly of States, which is its most comprehensive organ, to be summoned.<sup>44</sup>

<sup>44</sup> *Procès Verbal*, fifth Council session, p. 203.

## CHAPTER XII

### THE COUNCIL AND THE SINO-JAPANESE DISPUTE

From the establishment of the League it was always anticipated that the Council would some day be called upon to confront an international crisis of the first magnitude. Such a crisis, it was recognized in advance, would provide a test more searching than any provided during the early post-war years, both of the efficacy of the Council in its function as guardian of world peace, and of the value of the Covenant as the legal instrument which authorizes and limits this function.

The perfect test, it was often predicted during the League's first decade, would involve a number of factors. It would be a dispute between League members, having no direct connection with the war of 1914-18 and the subsequent peace treaties, and thereby offering no facilities for transference of Council responsibility. It would be a case in which a Great Power, having permanent Council membership, would defy the collective opinion of that body, resist all moral pressure, and take advantage of every legal loophole in the Covenant to preserve freedom to work its ends. If the dispute involved either the United States or Russia, or conceivably both of these non-member States, it would be all the more illuminating, not merely in testing the Council's authority but also in revealing the extent to which these non-members would co-operate with the machinery established at Geneva. On the other hand, the trial which would enable the most valuable deductions to be drawn should not, it was felt, arise until the war period was completely of the past, with unusual dissension and bitterness between League members thereby eliminated.

The Sino-Japanese dispute which flamed out in September 1931 fulfilled rather more than all the requirements of the ideal test. Geographically and culturally the scene could not have been more remote from Geneva, while the entire background was greatly complicated by highly involved political and economic factors. The dispute came not merely ahead of the Disarmament Conference, generally regarded as symbolizing the political wind-up of the World War, but also at a time when the force of the League was greatly weakened by the effects of a universal and unprecedented depression. The emergence of the crisis found one permanent member of the Council (Great Britain) completely controlled by a political party strongly favoring contraction rather than expansion of commitments in the field of international co-operation. The government of another permanent Council member (Germany) was menaced with revolutionary overthrow by powerful forces thoroughly out of sympathy with the idea of collective international action. Relations between the two other permanent European members of the Council were distinctly strained. Without particularizing further it may be said that the Sino-Japanese dispute was in itself a problem of supreme difficulty, which was forced on the League at a period when the immature international organization was by no means well prepared for the emergency.

Consequently, the structural weaknesses revealed by this protracted crisis, while not to be palliated, are also manifestly not to be over-emphasized. The Sino-Japanese dispute was probably as severe a test as any the League will ever be called upon to face. All the evidence in the case must be considered in the light of the unusual complexity of the dispute. But when this is done the constitutional implications remain far more clear and instructive than was the case in the less searching crises of the League's earlier years.

## FIRST REPORT ON THE DISPUTE

From the receipt of the first telegraphic dispatches telling of the seizure of Mukden by Japanese troops on the night of September 18-19, 1931, the central organization of the League showed itself fully aware of the potential seriousness of the crisis in the Far East. As it happened, the initial clash in Manchuria came at a moment when the full machinery of the League was operating in Geneva. The twelfth session of the Assembly was little more than half-way through its agenda on September 19 and on that very day the sixty-fifth session of the Council, to which China had been elected a non-permanent member on September 14, was scheduled to hold its opening meeting. There was no need for a moment's delay in setting the League's peace preservation machinery in operation.

Kenkichi Yoshizawa, later to become foreign minister of Japan in one of the most critical periods of his country's history, first brought the far-reaching incident at Mukden to the formal attention of the League. Acceding to a request made to him just before the opening of the Council the Japanese representative made a short report at the opening of the public meeting on the afternoon of September 19. This was followed by an equally brief statement from the Chinese representative, Dr. Sze.<sup>1</sup>

<sup>1</sup> The stenographic report of the proceedings read:

"The President of the Council, Alejandro Lerroux—The honorable representative of Japan has the floor.

"Mr. Yoshizawa—The information which has appeared in the press today announces that the incident is said to have taken place yesterday afternoon in the neighborhood of the city of Mukden. I desire to inform the Council—and, indeed, its President has asked that I should do so—of the first information I have received, which came to hand only this morning.

"Unfortunately, only very slight details are available. A collision has occurred between Japanese and Chinese troops. It is said to have taken place in the neighborhood of Mukden, near the South Manchuria Railway.

"The Japanese government, as soon as it received the information, took all possible measures to insure that this local incident should not lead to

Within twenty-four hours of the first collision between Japanese and Chinese troops, on the opposite side of the globe from Geneva, the Council had taken preliminary steps towards exercising a League control.

#### THE INVOCATION OF ARTICLE 11

Two days later, when it was apparent that the Manchurian incident had aspects going far beyond a haphazard outpost encounter, China officially requested action by the League under the provisions of Article 11 of the Covenant. By paragraph two of this article it is "declared to be the friendly right of each member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends." Under the terms of the first paragraph of the article the full Council, including the disputants, gives consideration to the disturbing circumstances.

The invocation of Article 11, in other words, permits the Council to mediate in a thoroughly objective and impartial manner, for which reason it is the instrument

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any more serious complications. I have not failed to ask my government for supplementary information and my government will do all in its power to restore order.

"The President—The honorable representative of China has the floor.

"Dr. Sze—Mr. President and members of the Council: I shall not conceal that I have been greatly disturbed by the news from Manchuria regarding the incident mentioned by the representative of Japan. The information which I have up to now seems to indicate that the incident was not occasioned by any act on the part of the Chinese. I shall not fail, Mr. President, to keep the Council informed of all authentic news received by me regarding this highly regrettable incident.

"The President—We have heard the statements the representatives of the Japanese and Chinese governments have been good enough to make. The Council doubtless will have heard with satisfaction that the Japanese government will take necessary measures to lead to an appeasement of the situation. My colleagues will also agree with me in expressing the most sincere wishes for a prompt settlement of this question."

normally chosen during the opening stages of an international controversy. Paragraph one of the article also provides that in an emergency the request to summon an immediate meeting of the Council shall be made to the Secretary-General by any member of the League. In accordance with this procedure Dr. Sze on September 21 sent a communication to Sir Eric Drummond of which the following was the salient part:

I am instructed by the national government of China to bring to your attention the facts stated below, and to request that, in virtue of Article 11 of the Covenant of the League of Nations, you forthwith summon a meeting of the Council of the League in order that it may take such action as it may deem wise and effectual so that the peace of nations may be safeguarded. . . .

In view of the foregoing facts [a statement of events in Manchuria] the Republic of China, a member of the League of Nations, asserts that a situation has arisen which calls for action under the terms of Article 11 of the Covenant. I am, therefore, instructed by my government to request that, in pursuance of authority given to it by Article 11 of the Covenant, the Council take immediate steps to prevent the further development of a situation endangering the peace of nations; to re-establish the *status quo ante*; and to determine the amounts and character of such reparations as may be found due to the Republic of China.

I will add that the government of China is fully prepared to act in conformity with whatever recommendations it may receive from the Council, and to abide by whatever decisions the League of Nations may adopt in the premises.<sup>2</sup>

#### THE COUNCIL'S INITIAL ACTION

This communication was immediately circulated to the Council representatives at Geneva, who were asked by the Secretary-General to come together for a special meeting on the Sino-Japanese crisis the following morning (September 22). At this all-day meeting, the competency of which under Article 11 was not disputed by

<sup>2</sup> *Official Journal*, December 1931, pp. 2453-54.

the Japanese representative, the very different viewpoints of the two disputants were presented at great length. Mr. Yoshizawa pointed out that his government favored direct Sino-Japanese negotiations as a road to settlement, but Dr. Sze replied that China could not agree to this method as long as Japanese military occupation of its territory continued.

Eventually a three-point procedure suggested by Viscount Cecil was unanimously authorized by all the members of the Council, including the Chinese and Japanese representatives. To forward this procedure a subcommittee of the Council composed of the representatives of Germany, Great Britain, France, and Italy was appointed to work with President Lerroux (Spain) of the Council, an example of the "inner circle" development discussed in Chapter X, which aroused criticism among spokesmen of the smaller States. The terms of the Council action were set forth in the following cable sent by its President to the Chinese and Japanese governments the night of September 22:

I have the honour to inform you that, at its meeting today devoted to the Chinese government's appeal under Article 11 of the Covenant in connection with the situation in Manchuria, the Council of the League of Nations unanimously authorised me: (1) to address an urgent appeal to the governments of China and Japan to refrain from any act which might aggravate the situation or prejudice the peaceful settlement of the problem; (2) to endeavour in consultation with the Chinese and Japanese representatives to find adequate means of enabling the two countries to withdraw their troops forthwith without the safety of their nationals and their property being endangered. (3) The Council further decided to forward the minutes of all the meetings of the Council and documents relating to this question to the government of the United States of America for its information. I am firmly convinced that, in response to the appeal which the Council has authorised me to make to you, your government will take all possible steps to prevent the commission of any act which might aggravate the situation or prejudice the peaceful settle-



ment of the problem. I am about to begin the consultations contemplated with the Japanese and Chinese representatives with a view to the execution of paragraph (2). For these consultations I have obtained the assistance of the representatives of Germany, Great Britain, France and Italy. The decision referred to under (3) has been carried out.<sup>3</sup>

A thinly veiled request for American co-operation and support was conveyed by the Council's decision to provide Washington with documentary evidence on the crisis "for its information." The United States government would have had no difficulty in getting most if not all of this material through its official representatives at Geneva without any formal action by the Council. But in view of the fact that the Open Door policy, the Nine-Power Treaty, and the Pact of Paris were all called into question by the events in Manchuria, it was thoroughly logical for the Council to do everything to facilitate joint action by the United States in a crisis which from the outset threatened to overtax the strength of the League. This initial step received a cordial response from Washington. On September 23 the following note was sent by Secretary of State Stimson to the President of the Council:

I have received from the American Minister at Berne the copy of the resolution of the Council of the League of Nations which you transmitted to him.

I have noted the two parts of this resolution and the fact that they have been embodied in a note which you have addressed to the governments of Japan and China.

I assure you that the government of the United States is in whole-hearted sympathy with the attitude of the League of Nations as expressed in the Council's resolution and will despatch to Japan and China notes along similar lines.

I have already urged cessation of hostilities and a withdrawal from the present situation of danger and will continue earnestly to work for the restoration of peace.<sup>4</sup>

<sup>3</sup> The same, p. 2454.

<sup>4</sup> 72 Cong. S. doc. 55, p. 5.

## THE ASSEMBLY APPROVES COUNCIL PROCEDURE

In the meantime there had been apparent in the Assembly, still holding its twelfth annual session, a certain uneasiness lest the Council should be tempted by the difficulties of the problem to relinquish its responsibilities therein, as had happened at the time of the Corfu incident in 1923. To allay this feeling the President of the Council addressed the Assembly at its plenary meeting on September 24, promising a further communication "as soon as circumstances allow." This further communication was duly made by Señor Lerroux on September 29, just before the termination of the Twelfth Assembly. In his remarks the President of the Council gave an objective summary of the activities of that organ in the Sino-Japanese dispute to date. At its conclusion there was no dissent from the observation of the President of the Assembly (M. Titulesco), that "I think the Assembly will agree with me that the Council should continue to carry out its pacific mission, and that there is no need for the two parties in question, or for the other members of the Assembly, to open a discussion on the statement just made by the President of the Council."

The Assembly adjourned without taking any action on the dispute, partly because it was in the hands of the Council under Article 11, but even more because the Council was able to hold out promise of a successful and speedy solution. The favorable outlook was emphasized by the President of the Council in his concluding remarks to the Assembly, which were:

Such is the present situation, I only wish to refer to several essential points: firstly, the statement by the Japanese government and by its representative that there never has been, and never will be, any question of the military occupation of Manchuria; secondly, the fact that the Japanese government has on several occasions insisted, before the Council, on its intention

to withdraw the Japanese forces as soon as possible to within the railway zone, in so far as the safety of its nationals and their property may be effectively guaranteed; thirdly, the fact that this intention has, according to the declaration made yesterday to the Council by the Japanese representative, already been translated, during the last two days, into definite action and that outside the railway zone Japanese troops are stationed in only four localities.

The Council has noted these reassuring statements by the Japanese government. It feels certain that, in this very delicate affair, as in other affairs which have been laid before it, the goodwill of the parties and their loyalty to international engagements will be found to constitute the best guarantee for the peace of the world. Having had the matter laid before it under Article 11 of the Covenant, the Council will, after the close of this session of the Assembly, continue its efforts to assist the representatives of the two parties to obtain, by such measures as both may deem acceptable, a satisfactory settlement of a situation which has deeply affected the relations between two great nations and at one time even seemed likely, before the real progress achieved in the last few days, to constitute a threat to international peace.<sup>5</sup>

#### THE RESOLUTION OF SEPTEMBER 30

The developments of September 24-29 were actually much less favorable than was indicated by this report to the Assembly. During this period no real progress had been made by the Council in securing agreement on methods to be used in settling the controversy. At private sessions of the Council's "inner circle" the Chinese representative had urged the appointment of a League commission of inquiry, for which the Greco-Bulgarian dispute of 1925 provided a direct precedent. The Japanese representative, however, held out for direct negotiations between the parties directly concerned, pointing out that no commission of inquiry had been appointed by the League at the time of the Corfu incident.

<sup>5</sup> *Verbatim Record*, Twelfth Assembly, Sept. 29, 1931, p. 14.

At this critical juncture the absence of co-ordination between the evolving policy of the Council and that of the United States proved a determining factor. On September 24 it was reported at Geneva that Mr. Stimson had told the Japanese Ambassador in Washington that he favored direct negotiations between the two parties, and that he would not favor American participation in the work of the proposed commission of inquiry. On this sign of a divergence between the League and the American attitude the Japanese position immediately hardened. In the face of a defined American position the Council was reluctant to insist on a different course. Shortly afterwards Viscount Cecil, as the representative of Great Britain, came out in favor of direct negotiations, emphasizing that under Article 11 it is the responsibility of the parties themselves, rather than the Council, to settle their controversy. In reply the Chinese representative hinted at the invocation of Article 15, under which League procedure is not a matter of discretion, but is definitely outlined.

At the close of a meeting of the full Council on September 28 the Japanese were still insisting on direct negotiations without any outside participation, while the Chinese were demanding negotiations initiated through the Council, with responsibility to that body. Under the circumstances the best that could be done was to place trust in the frequent assurances received at Geneva from both Tokyo and Nanking and to provide a breathing spell in which Japan would have opportunity to withdraw its troops, as promised. To further this end the Council adjourned its session on September 30, after adopting unanimously, including the approval of both disputants, the following resolution:

#### THE COUNCIL

1. Notes the replies of the Chinese and Japanese governments to the urgent appeal addressed to them by its President

and the steps that have already been taken in response to that appeal;

2. Recognises the importance of the Japanese government's statement that it has no territorial designs in Manchuria;

3. Notes the Japanese representative's statement that his government will continue, as rapidly as possible, the withdrawal of its troops, which has already been begun, into the railway zone in proportion as the safety of the lives and property of Japanese nationals is effectively assured and that it hopes to carry out this intention in full as speedily as may be;

4. Notes the Chinese representative's statement that his government will assume responsibility for the safety of the lives and property of Japanese nationals outside that zone as the withdrawal of the Japanese troops continues and the Chinese local authorities and police forces are re-established;

5. Being convinced that both governments are anxious to avoid taking any action which might disturb the peace and good understanding between the two nations, notes that the Chinese and Japanese representatives have given assurances that their respective governments will take all necessary steps to prevent any extension of the scope of the incident or any aggravation of the situation;

6. Requests both parties to do all in their power to hasten the restoration of normal relations between them and for that purpose to continue and speedily complete the execution of the above mentioned undertakings;

7. Requests both parties to furnish the Council at frequent intervals with full information as to the development of the situation;

8. Decides, in the absence of any unforeseen occurrence which might render an immediate meeting essential, to meet again at Geneva on Wednesday, October 14, 1931, to consider the situation as it then stands;

9. Authorises its President to cancel the meeting of the Council fixed for October 14 should he decide, after consulting his colleagues, and more particularly the representatives of the two parties, that, in view of such information as he may have received from the parties or from other members of the Council as to the development of the situation, the meeting is no longer necessary.<sup>6</sup>

<sup>6</sup> *Official Journal*, December 1931, pp. 2307-08.

## CONVOCAION OF SECOND EMERGENCY SESSION

Hope that the Council meeting scheduled for October 14 could be dispensed with soon proved completely vain. The early days of October brought not a contraction but an extension of Japanese military activities in Manchuria. Chinchow, about two hundred miles distant from Mukden, was bombed on October 8. Later events at Shanghai were foreshadowed when, on October 9, the Japanese government sent a stern memorandum to Nanking on the subject of the anti-Japanese boycott in China. The conclusion of this memorandum, in the telegraphic version sent from Tokyo to Geneva and circulated by the Secretary-General to the Council on October 10, was as follows:

. . . Japanese government desires to call once more serious attention of Chinese government to those actions on part of anti-Japanese societies, and to declare, at same time, that Chinese government will be held responsible for whatever may be consequences of its failure to suppress anti-Japanese movement, and to afford adequate protection to lives and property of Japanese subjects in China.<sup>7</sup>

With the situation growing in tenseness daily, and following a request from the Chinese representative on the Council that this League organ "be forthwith summoned," the President of the Council on the advice of the Secretary-General convoked the meeting for October 13, a day earlier than at first scheduled. This message was circularized on October 9, following one sent earlier on the same day to the governments of Japan and China which may be quoted as illustrating the absolute impartiality preserved by the Council as long as it was operating under Article 11 of the Covenant:

Information received tends to show that incidents are taking place in Manchuria and elsewhere which cannot but embitter feeling, and thus render settlement more difficult. In these

<sup>7</sup> The same, p. 2482.

circumstances, and pending the meeting of the Council, I feel it is my duty as president of the Council to remind the two parties of the engagements taken before the Council to refrain from any action which would aggravate the situation, and to express the confident hope that steps are being taken on both sides to execute fully the assurances given to the Council and embodied in its resolution of thirtieth September.<sup>8</sup>

On October 12, in reply to this telegram, the Japanese government introduced an entirely new and disturbing element into the situation by informing the Council, as had already been hinted to Nanking, that it was "essential to agree upon certain main principles to form a foundation for the maintenance of normal relations between the two countries." The nature of these "fundamental points" was not specified, thus intimating that they were not the affair of the Council, but the message concluded with an offer to open direct negotiations on the subject with responsible representatives of the Chinese government. It was made clear that military evacuation of Chinese territory would not precede these negotiations.<sup>9</sup>

#### ASSURANCE OF AMERICAN SUPPORT

From the viewpoint of Geneva, however, this disquieting change in the Japanese attitude was more than offset by a communication from the Secretary of State of the United States urging that the League "in no way relax its vigilance" in the Manchurian controversy and "in no way fail to assert all the pressure and authority within its competence." The message further promised that the American government "will endeavor to reinforce what the League does," thereby carrying an assurance that there would be no further divergencies of policy between Geneva and Washington, and therefore no gaps through which Japanese diplomacy could effect unnecessary delays

<sup>8</sup> The same, p. 2484.

<sup>9</sup> The same, pp. 2484-85.

in settling the dispute. The communication was cabled to the American Consulate at Geneva on October 9 for delivery to the Secretary-General. It was circulated by him to the members of the Council on October 11 and its text, as follows, was on the same day made public in Washington:

I believe that our co-operation in the future handling of this difficult matter should proceed along the course which has been followed ever since the first outbreak of the trouble fortunately found the Assembly and Council of the League of Nations in session. The Council has deliberated long and earnestly on this matter and the Covenant of the League of Nations provides permanent and already tested machinery for handling such issues as between States members of the League. Both the Chinese and Japanese have presented and argued their cases before the Council, and the world has been informed through published accounts with regard to the proceedings there. The Council has formulated conclusions and outlined a course of action to be followed by the disputants, and as the said disputants have made commitments to the Council, it is most desirable that the League in no way relax its vigilance and in no way fail to assert all the pressure and authority within its competence toward regulating the action of China and Japan in the premises.

On its part the American government, acting independently through its diplomatic representatives, will endeavor to reinforce what the League does and will make clear that it has a keen interest in the matter and is not oblivious to the obligations which the disputants have assumed to their fellow-signatories in the Pact of Paris as well as in the Nine-Power Pact should a time arise when it would seem advisable to bring forward those obligations. By this course we avoid any danger of embarrassing the League in the course to which it is now committed.<sup>10</sup>

On the eve of the opening of the emergency Council session it appeared, therefore, that a united front for this

<sup>10</sup> 72 Cong. S. doc. 55, p. 14. Decoding caused slight variations in the text of this message as delivered at Geneva, which may be consulted in the *Official Journal*, December 1931, p. 2485.



dispute had definitely been established between the Council and the United States. To carry this development to its logical conclusion the official American observer at League headquarters, Consul Prentiss B. Gilbert, was authorized by Secretary Stimson to attend the Council session in a consultative capacity, initiative for this development having been taken in Geneva as early as September 24. This authorization was said to have been first conveyed in one of the numerous telephonic conversations carried on between the State Department and the Geneva Consulate at this period.<sup>11</sup>

#### THE ISSUE OF FORMAL AMERICAN PARTICIPATION

The Japanese government, however, was quick to register its opposition to a development whereby a non-member of the League, assuming no responsibilities under the Covenant, would sit in a position which might be interpreted as leading to the passing of judgment on a member State admitted by all to have been punctilious in the discharge of its League obligations prior to the existing crisis. When the issue of formal American participation had first been raised at a secret meeting of the Council on September 24, Mr. Yoshizawa had declared that he would agree to the presence of an American observer if it was understood that this was an established rule for all emergencies threatening the preservation of world peace, and not an exception for the Manchurian case. Otherwise it would appear in Japan that the United States was only interested in co-operating with the Council when a case involving the most vital Japanese interests was under consideration.

When the Council reconvened on October 13, Mr. Yoshizawa let it be known that he regarded the issue of an invitation to a non-member State to sit with the Council as a matter of far-reaching constitutional importance,

<sup>11</sup> *New York Times*, Oct. 13, 1931.

requiring a unanimous vote of the Council for decision. This was the first emergence of the unanimity rule difficulty destined to block progress by the Council under Article 11. Five searching points were raised by the Japanese representative in a letter sent to the President of the Council on October 15:

1. When there is any question of inviting a member of the League or a non-member State (we will assume that they are on a footing of equality according to the Covenant) to send a representative to sit on the Council, ought it not to be settled whether the question before the Council specially affects the interests of that member or non-member State (Article 4, paragraph 5)?

2. When a question is brought before the Council under Article 11 of the Covenant, can there be any member or non-member State whose interests are specially affected by the matter within the meaning of Article 4(5)?

3. When the Council decides to invite a non-member State to send a representative to the Council, on what footing will he sit in the Council?

If he sits as an observer according to League precedent, is he entitled to take part in the discussions?

If he sits on a footing of equality with the members of the Council, has he the same rights and duties as they have?

4. If the Council should decide to invite a non-member State to be present at the proceedings of this session, would it be the Council's intention to create a precedent which would necessarily be followed whenever any matter was brought before the Council under Article 11?

5. Should not the Council's decision to invite a non-member State to send a representative to sit in the Council be taken unanimously, according to the normal rule laid down in the Covenant?<sup>12</sup>

Nevertheless, this particular hurdle was taken by the Council. The viewpoint of the majority was that the invitation to the United States should be regarded as a matter of procedure, for which a majority vote suffices under Article 5(2) of the Covenant. After repeated

<sup>12</sup> *Official Journal*, December 1931, p. 2323.

conferences the Japanese delegate modified his resistance to this interpretation to the extent of suggesting that the constitutional issues be referred to a committee of jurists to be summoned at Geneva. He refused, however, to be bound in advance by the findings of such a committee. At all-day meetings of the full Council and its Committee of Five on October 15 the reference to legal interpretation was voted down, receiving only Japanese and German support. Thereupon decision to invite American participation as a matter of procedure was taken by a vote of thirteen to one, Japan alone opposing. The position of the majority in this vote was fortified by the earlier and unanimous decision to keep the United States fully informed on the dispute, from which it was argued that formal participation by that Power would only be an improvement of method to save time.

Aristide Briand, who by delicate Secretariat manoeuvring had for the second part of this session taken the Council presidency rightfully belonging to Spain,<sup>13</sup> thereupon issued the following tactfully worded invitation asking the United States "to be associated" with the Council's efforts:

In the course of the discussion the opinion has been expressed that the question before the Council concerns the fulfilment of obligations arising not only from the Covenant of the League of Nations, but also from the Pact of Paris.

This opinion is certainly well founded, since in accordance with Article 2 of that Pact:

"The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them shall never be sought except by pacific means."

Foremost among the signatories of the Pact of Paris appear the United States of America. The United States were one of

<sup>13</sup> The meetings of the Council between Sept. 19 and Dec. 10, 1931 were all counted as part of its sixty-fifth session. Actually there were three distinct sessions in this period: from Sept. 19 to 30; from Oct. 13 to 24; and from Nov. 16 to Dec. 10. The first two of these three parts of the sixty-fifth session were held at Geneva, the last at Paris.

the proponents of the Pact, and I may be allowed to recall that I had the honour to be associated with the then Secretary of State of the United States as joint author. In consequence, the United States may be regarded as being especially interested in ensuring a settlement of the present dispute by pacific means.

Moreover, the government of the United States, with which communications regarding the dispute before the Council have already been exchanged, has expressed its whole-hearted sympathy with the attitude of the League of Nations, and has affirmed its desire to reinforce the action of the League. I feel confident that I shall be meeting the wishes of my colleagues in proposing that we should invite the government of the United States to be associated with our efforts by sending a representative to sit at the Council table so as to be in a position to express an opinion as to how, either in view of the present situation or of its future development, effect can best be given to the provisions of the Pact. By this means also the opportunity will be afforded him of following our deliberations on the problem as a whole.

I am sure that any action that might be taken under the Pact could not but strengthen the efforts which are now being made by the Council, in accordance with the obligations imposed upon it by the Covenant of the League of Nations, to effect the peaceful settlement of the problem under discussion.<sup>14</sup>

#### THE UNITED STATES SITS WITH THE COUNCIL

Late on the afternoon of October 16, just four weeks after the outbreak of hostilities at Mukden, Mr. Prentiss Gilbert took a seat at the Council table as the first representative of the United States to join in the deliberations of that League organ. In a public statement, however, he there made clear that his position was of a limited and exceptional character, entirely free from "your deliberations as to the application of the machinery of the Covenant of the League of Nations." In taking this position Mr. Gilbert was closely observing the instructions cabled

<sup>14</sup> *Official Journal*, December 1931, p. 2322.

him earlier the same day by Secretary Stimson, which were:

You are authorized to participate in the discussions of the Council when they relate to the possible application of the Kellogg-Briand Pact, to which treaty the United States is a party. You are expected to report the result of such discussions to the department for its determination as to possible action. If you are present at the discussion of any other aspect of the Chinese-Japanese dispute, it must be only as an observer and auditor.<sup>15</sup>

A representative of the United States was now sitting with the Council under a limited mandate and a long step towards welding the Pact of Paris to the peace preservation machinery of the League of Nations had apparently been taken. But this purely secondary development, so far as liquidation of the Sino-Japanese dispute was concerned, had occupied the greater part of four days of the emergency session, during which no advance had been made towards solution of the major problem. Moreover, a certain elusiveness in the position taken by the United States indicated that progress of co-operation with the Council was more nominal than real. On October 9 Mr. Stimson had urged that the League "in no way fail to assert all the pressure and authority within its competence." On October 16 his envoy at Geneva had told the Council that "in your deliberations as to the application of the machinery of the Covenant of the League of Nations, I repeat, we can of course take no part."<sup>16</sup> There was something akin to inconsistency between the two pronouncements, since it is arguable that to urge the application of machinery is in effect to participate in deliberations as to its application.

Without prejudice to its legal objections the Japanese government on October 19 gave formal acquiescence to

<sup>15</sup> 72 Cong. S. doc. 55, p. 18.

<sup>16</sup> *Official Journal*, December 1931, p. 2336.

the co-operation of an American observer on the League Council. By some this was regarded as an intimation that for practical purposes the co-operation was unimportant. To others, Japanese acquiescence seemed a placatory step prompted by the willingness of the United States to sit with the Council in spite of Japanese opposition. Neither interpretation minimizes the significance of the development as a precedent for the addition of a non-member State to the Council over the protest of a disputant.

An objective of the Department of State in having an American representative sit with the Council was to give greater force to an invocation of the Pact of Paris. This step, important because its failure in the test would destroy most of the moral value which is the main strength of this treaty, was taken by the twelve neutral members of the Council after two secret sessions on October 17. It was decided that these twelve governments, and also the United States, should be asked to remind both Tokyo and Nanking of the solemn obligation which they had undertaken under Article 2 of the Pact of Paris. On the same day notes to this effect were sent by France, Germany, Great Britain, Italy, Norway, and Spain. The United States followed suit on October 20.<sup>17</sup>

#### JAPAN'S "FUNDAMENTAL POINTS"

In the face of an increasing Council insistence for settlement of the dispute the Japanese government now began to inject new elements into the controversy, referring to the so-called Peking (Secret) Protocols of 1905, whereby China is alleged to have agreed not to construct

<sup>17</sup> The text of the note of the American government to China and Japan is given in 72 Cong. S. doc. 55, p. 20.

railroads paralleling the South Manchurian lines,<sup>18</sup> and emphasizing the importance of the "fundamental points" which had been raised for the first time at Geneva a week earlier. According to press dispatches from Tokyo these fundamental points were:

1. The two countries shall pledge themselves to commit no act of aggression against each other.
2. They will suppress hostile agitations, boycotts and hostile propaganda.
3. Japan will respect the territorial integrity of Manchuria.
4. China will protect Japanese residents in Manchuria.
5. China and Japan will make an agreement for co-operation and avoidance of ruinous competition between the South Manchurian and other railroads in Manchuria and give effect to all existing treaty rights.<sup>19</sup>

Unable to obtain a reliable definition of the scope and implications of these "fundamental points," especially the fifth, and in face of repeated Japanese refusals to agree to various suggested compromises, the Council on October 22 took up consideration of a draft resolution to which its members, excluding the disputants, had already given informal approval. Recalling the assurances as to peaceful intention repeatedly given by the Japanese government, the draft requested an immediate start in the withdrawal of Japanese troops into the railway zone. It was further requested that this evacuation should be completed by November 16, which date was set for a resumption of the Council sittings. In parallel terms the Chinese government was called upon to insure the protection of life and property of all Japanese subjects in the area to be evacuated, and to invite representatives of other Powers to "follow the execution of the arrangements"

<sup>18</sup> No official text of these treaties has ever been published, and their validity has been consistently contested by Chinese governments. Compare C. W. Young, *Japan's Special Position in Manchuria*, pp. 95 ff.

<sup>19</sup> *New York Times*, Oct. 21, 1931.

to this end. Regardless of the Chinese insistence on naming a day by which the invasion should have been terminated, it is very doubtful that the Council was well-advised to risk the loss of prestige involved in specifying a date and having this demand ignored. Such specifications savored of an ultimatum, not to be delivered unless it could be enforced.

The next day, October 23, Dr. Sze accepted the resolution in behalf of his government, at the same time reserving Chinese rights on the questions of responsibility and reparations for the military occupation. These, he said, China would "submit to any form of neutral third-party judgment." Mr. Yoshizawa, however, reported that his government found the draft resolution unacceptable and proposed an amended form by which the Council would indorse "the achievement of a previous understanding between the Chinese and Japanese governments as regards the fundamental principles governing normal relations—that is to say, affording an assurance for the safety of the lives of Japanese nationals and for the protection of their property." He added that it was impossible to fix a definite date for the withdrawal of Japanese troops into the railway zone since his government had doubts as to the efficacy of the measures for the protection of Japanese nationals proposed by the Council.<sup>20</sup>

Following this counter-proposal, at meetings on October 23 and 24 much fruitless effort was expended in trying to obtain from the Japanese representative a definite explanation of what his government meant by the phrase "fundamental principles governing normal relations." The Council, said Viscount Cecil, could not consider accepting such a phrase without knowing exactly what was meant thereby. The Spanish representative, Señor de Madariaga, further expressed doubts as to the validity of the Japanese contention that a government is

<sup>20</sup> *Official Journal*, December 1931, pp. 2346-47.



responsible for the security of its citizens in a foreign country. Both of these speakers agreed that evacuation should precede and not follow discussion of Japanese treaty rights in Manchuria, a subject on which no demand had as yet been presented to the Council.

To these arguments, however, the Japanese representative remained obdurate. He explained that in the opinion of his government the "fundamental principles" were matters for direct discussion between the two disputants and not for consideration and debate by the Council. Observing that the problems raised were matters "affecting the very life of Japan," he closed his statement by saying that:

Such a situation cannot be judged merely from the standpoint of ideas. It would also be a grave mistake to judge it solely from the standpoint of facts. My government, as regards the position it has taken up, has desired to have regard both to ideas and to facts. While not wishing to depart for a single moment from the spirit or the letter of its undertakings, the Japanese government must assume its responsibilities to its nationals.

The draft resolution submitted to us does not, in its opinion, lay down the conditions which it regards as essential for effectively safeguarding the lives and property of its nationals. It is for that reason that, to my great regret, I cannot accept the draft resolution submitted by the President.<sup>21</sup>

#### THE DRAFT RESOLUTION OF OCTOBER 24

All hope of obtaining a unanimous resolution having been shattered, the Council, on the night of October 24, rejected the Japanese amendment by a vote of thirteen to one (Japan) and then adopted the draft resolution, without alteration, on a formal roll call in which only Japan was opposed. The text of the resolution, sponsored by the representatives of the British Empire, China, France, Germany, Guatemala, Irish Free State, Italy, Yugoslavia,

<sup>21</sup> The same, p. 2358.

Norway, Panama, Peru, Poland, and Spain, was as follows:

THE COUNCIL,

In pursuance of the resolution passed on September 30,

Noting that in addition to the invocation by the government of China, of Article 11 of the Covenant, Article 2 of the Pact of Paris has also been invoked by a number of governments;

1. Recalls the undertakings given to the Council by the governments of China and Japan in that resolution, and in particular the statement of the Japanese representative that the Japanese government would continue as rapidly as possible the withdrawal of its troops into the railway zone in proportion as the safety of the lives and property of Japanese nationals is effectively assured, and the statement of the Chinese representative that his government will assume the responsibility for the safety of the lives and property of Japanese nationals outside that zone—a pledge which implies the effective protection of Japanese subjects residing in Manchuria;

2. Recalls further that both governments have given the assurance that they would refrain from any measures which might aggravate the existing situation, and are therefore bound not to resort to any aggressive policy or action and to take measures to suppress hostile agitation;

3. Recalls the Japanese statement that Japan has no territorial designs in Manchuria, and notes that this statement is in accordance with the terms of the Covenant of the League of Nations and of the Nine-Power Treaty, the signatories of which are pledged "to respect the sovereignty, the independence, and the territorial and administrative integrity of China";

4. Being convinced that the fulfillment of these assurances and undertakings is essential for the restoration of normal relations between the two parties;

- a) calls upon the Japanese government to begin immediately and to proceed progressively with the withdrawal of its troops into the railway zone, so that the total withdrawal may be effected before the date fixed for the next meeting of the Council;

- b) calls upon the Chinese government, in execution of its general pledge to assume the responsibility for the safety of the

lives and property of all Japanese subjects resident in Manchuria, to make such arrangements for taking over the territory thus evacuated as will insure the safety of the lives and property of Japanese subjects there, and requests the Chinese government to associate with the Chinese authorities designated for the above purpose representatives of other Powers in order that such representatives may follow the execution of the arrangements;

5. Recommends that the Chinese and Japanese governments should immediately appoint representatives to arrange the details of the execution of all points relating to the evacuation and the taking over of the evacuated territory so that they may proceed smoothly and without delay;

6. Recommends the Chinese and Japanese governments, as soon as the evacuation is completed, to begin direct negotiations on questions outstanding between them, and in particular those arising out of recent incidents as well as those relating to existing difficulties due to the railway situation in Manchuria. For this purpose, the Council suggests that the two parties should set up a conciliation committee, or some such permanent machinery;

7. Decides to adjourn till November 16, at which date it will again examine the situation, but authorises its President to convoke a meeting at an earlier date should it in his opinion be desirable.<sup>22</sup>

Since Article 11 of the Covenant, under which the Council was still acting, requires unanimity, this strongly worded resolution possessed only moral force. It was therefore made plain that the resolution of October 24 only supplemented, and in no way superseded, that of September 30, which had been unanimously adopted by the Council and under which it was still acting. Council members were therefore urged to continue to send all reliable information obtainable on the situation in Manchuria to that organ. In fulfillment of this request the Chinese government alone, between September 19 and October 24, had sent ninety-three separate and lengthy telegrams to Geneva.

<sup>22</sup> The same, pp. 2340-41.

In view of the introduction of the issue of treaty fulfillment into the controversy the Chinese representative, immediately after adjournment of the session of October 24, addressed the following communication to M. Briand in his capacity as president of the Council:

With reference to the observations on treaty obligations made in the Council this morning by the honourable delegate for Great Britain, with which I am in hearty agreement, I am authorized by my government to make the following declaration:

China, like every member of the League of Nations, is bound by the Covenant to "a scrupulous respect for all treaty obligations." The Chinese government for its part is determined loyally to fulfill *all* its obligations under the Covenant. It is prepared to give proofs of this intention by undertaking to settle all disputes with Japan as to treaty interpretation by arbitration or judicial settlement, as provided in Article 13 of the Covenant.

In pursuance of this purpose the Chinese government is willing to conclude with Japan a treaty of arbitration similar to that recently concluded between China and the United States of America, or to those concluded of recent years in increasing numbers between members of the League.<sup>23</sup>

#### EXTENSION OF JAPANESE OCCUPATION

The resolution adopted by the Council on October 24 over Japanese protest proved utterly without effect in securing evacuation of the occupied area. Indeed, within a few days of the Council's action Japanese troops were penetrating into districts previously immune from their activities. On November 2 the Council was informed by Tokyo that soldiers had been sent to repair the Nonni River bridge on the Taonan-Anganchi line, only a few miles from the main line of the Chinese Eastern Railway in northern Manchuria. Sharp fighting continued in this district for over two weeks, culminating in Japanese occupation of Tsitsihar, deep within the Russian "sphere

<sup>23</sup> The same, p. 2513.

of influence," on November 19. On November 8, and again later in the month, disorders of obscure origin in Tientsin, where Japanese troops are normally stationed, led to Sino-Japanese hostilities in that city. Both in breadth and in depth there was steady augmentation of the dispute between the two Powers after the adjournment of the Council's second emergency session.

On November 1 came the first direct charges from the Chinese government regarding Japanese seizure of local revenues in Manchuria.<sup>24</sup> These charges were supplemented by reports from Dr. Frederick A. Cleveland, associate chief inspector of salt revenue. Such incidents, pointing to the forceful displacement of Chinese civil government in Manchuria, were sharply criticized in a note from M. Briand sent on November 5 to the Japanese representative on the Council. In its reply the Japanese government did not deny military interference with the Chinese financial services, but attempted to justify the action under "these exceptional circumstances" and pointed out that the revenues were only being transferred to newly established local authorities: "The action of the military authorities in intervening to transfer the surplus revenues of the Chinese Salt Tax Office to another Chinese body cannot be regarded as unjustifiable."<sup>25</sup>

The Japanese government did not merely disregard the Council resolution of October 24. On the basis of the unanimity rule established for both Assembly and Council "except where otherwise expressly provided" by the Covenant, Tokyo proceeded to deny that there was any such resolution. This was done in tactful language to the Council on October 28, and brusquely in a communication to Nanking on October 31 which stated that: "The Japanese government desires to draw the attention of the Chinese government to the fact that no resolution was

<sup>24</sup> League Document C. 789. M. 383. 1931. VII.

<sup>25</sup> League Document C. 863. M. 441. 1931. VII.

adopted by the Council of the League of Nations on October 24."

The position taken by the United States with regard to this controversial issue is particularly interesting. In accordance with his general instructions the American representative sitting with the Council kept silence during the vote on October 24, nor did he make any comment on the subject. For nearly two weeks Washington gave no public intimation of official support for the Council's action, in spite of Mr. Stimson's earlier request that the League should "in no way fail to assert all the pressure and authority within its competence." Then, after the Japanese government had gone on record as maintaining that juridically there was no resolution on October 24, the government at Washington formally associated itself with the resolution except for the time limit (November 16) set for evacuation.

This was done in a memorandum handed by W. Cameron Forbes, then American ambassador at Tokyo, to Baron Shidehara, then Japanese foreign minister, on November 5. The delay was undoubtedly in part due to the belief of the Department of State that the Council had erred in judgment by yielding to Chinese insistence in setting an immediate date for the "total withdrawal" of Japanese troops into the railway zone. Instead of naming a day for the completion of evacuation, the American memorandum suggested "withdrawal of the troops as soon as this can be safely accomplished in the present emergency."<sup>28</sup>

On the following day the Secretary of State took occasion to emphasize the absence of certainty in the co-operation of the United States with the Council, issuing the following statement to the press:

<sup>28</sup> The text of this memorandum is given in 72 Cong. S. doc. 55, pp. 30-32.

The policy of the government of the United States remains unchanged, namely by acting independently through the diplomatic channels and reserving complete independence of judgment as to each step, to co-operate with and support the other nations of the world in their objective of peace in Manchuria.<sup>27</sup>

#### THE "FUNDAMENTAL POINTS" DEFINED

A clarification of importance in the Japanese attitude took place in the interval between the second and third emergency meetings of the Council. On October 28 the Japanese government transmitted a declaration officially defining its five "fundamental points" in terms approximately the same as those previously published in the press. M. Briand promptly replied that:

It, therefore, appears to me, and I feel sure that my colleagues on the Council, including, I trust, Your Excellency, will agree that the Chinese government have given to the Council of the League, on which Japan has a permanent representative, pledges which cover the various fundamental principles raised by the Japanese government.<sup>28</sup>

On November 8, however, the Japanese government in a communication of considerable length expressed itself as dissatisfied with this interpretation and again held out for "direct negotiations between the two parties of the fundamental principles that should govern normal relations between any two nations." These fundamental principles had now been officially defined as follows:

1. Mutual repudiation of aggressive policy and conduct,
2. Respect for China's territorial integrity,
3. Complete suppression of all organized movements interfering with freedom of trade and stirring up international hatred,
4. Effective protection throughout Manchuria of all peaceful pursuits undertaken by Japanese subjects,
5. Respect for treaty rights of Japan in Manchuria.<sup>29</sup>

<sup>27</sup> Department of State: *Press Release*, Nov. 6, 1931.

<sup>28</sup> *Official Journal*, December 1931, p. 2516.

<sup>29</sup> The same, pp. 2514 and 2583.

## AMERICAN WITHDRAWAL FROM THE COUNCIL

"Independence of judgment as to each step" was more apparent than co-operation between the United States and the Council when the latter assembled at Paris on November 16 for its third session on the Sino-Japanese crisis. The meetings were opened in the famous Salle de l'Horloge at the Ministry of Foreign Affairs, in the room where the Pact of Paris had been signed by Secretary of State Kellogg on August 27, 1928. But this time no official of the United States was present to give American support to the effort to preserve peace in the Orient.

Five days before the Council met the Department of State had again varied its method of co-operation with the League. Over the opposition of Japan the Council had established the right of the United States to participate in the sittings of that organ. Washington now renounced this right. Consul Gilbert remained in Geneva and Ambassador Dawes was ordered from his London post to confer with, but not to sit with, the Council representatives during their Paris session. The move was doubtless calculated to diminish potential hostility in the Senate, where Mr. Dawes as a former vice-president and presiding officer was much better known than Mr. Gilbert. The very superior diplomatic rank of the Ambassador at London also made it a move definable as complimentary to the Council. But in conjunction with the aloofness towards the Council as a body maintained by Mr. Dawes during the session, his appointment did not seem to strengthen the policy of co-operation, and possibly even encouraged Japan to work through the places where the actions of the Council and of the United States failed to harmonize. The American Ambassador emphasized the possibilities of a variation of method in a public statement issued on his arrival in Paris on November 13:



The Council of the League in the Manchurian situation is considering matters which presumably affect not only the treaty rights and general interests of the United States under the Nine-Power Pact, but relate to the Kellogg Pact as well. I am here, therefore, to confer with members of the Council individually with regard to a problem which is of common concern and involves mutual treaty interests.

I shall hope to make every contact which is essential to the exercise of any influence we may have in properly supporting the League's effort to avert war and to make effective the Kellogg Pact.

The United States is not a member of the League, and the methods which have been followed on occasions when a matter of concern and interest to the League and to ourselves is under consideration have varied. On this occasion there is no anticipation on the part of my government or myself that it will be found necessary for me to attend the meetings of the Council.<sup>80</sup>

#### RENEWAL OF COMMISSION PROPOSAL

The effort to secure evacuation before negotiation having failed, the Council task had now become one of extraordinary complexity. It was necessary to endeavor to prevent a spread of hostilities, to find a formula for co-operation between the exceedingly antagonistic Chinese and Japanese delegates, and to insure that this formula would be acceptable to a spokesman of the United States generally regarded as personally hostile to the League. In the preceding two months, moreover, the whole basis of the problem had changed so as to center on the treaty rights emphasized in the fifth of the Japanese "fundamental principles." To find a basis for compromise in this matter was therefore the first effort of the Council negotiators and in contrast with the earlier Geneva sessions mutual recriminations and counter-charges between the disputants were severely discouraged. The principal hope for agreement seemed to lie in temporary acceptance of the *status quo*, over Chinese pro-

<sup>80</sup> *New York Times*, Nov. 14, 1931.

test, and appointment of a strong neutral commission of inquiry in Manchuria on the recommendations of which a permanent settlement acceptable both to China and Japan might be drawn up.

The proposal for a commission of inquiry, which Japan had refused to sanction at the outbreak of the dispute, was formally made to the Council by the Japanese representative at the public meeting held on November 21. In his words:

So as to be able to pursue our efforts usefully on the basis of Article 11 of the Covenant and of the resolution of September 30, it is essential that we should have a clear view of realities, and I think that everyone will agree in desiring to obtain impartial information on the situation. Accordingly, the Japanese government considers that the essential condition of a fundamental solution of the question is a real knowledge of the situation as a whole, both in Manchuria and in China itself. It is for this reason that it proposes that the League of Nations should send a commission of enquiry to the spot. I believe that this proposal cannot fail to obtain the approval of all the members of the Council. Of course, this commission would not be empowered to intervene in the negotiations which may be initiated between the two parties, or to supervise the movements of the military forces of either.

There is one thing I should like to add. In my government's view, the creation and despatch of this commission in no way modify its sincere desire to withdraw its troops as quickly as possible within the railway zone, in pursuance of the resolution of September 30.

Already, to the extent permitted by the restoration of order, it has brought back a considerable number of detachments, and it will pursue this withdrawal, in the conditions envisaged by it up to the present, as soon as the necessary security has been established.<sup>81</sup>

To this proposal the Chinese representative gave guarded acceptance, asserting that on the basic issue of military occupation of Chinese territory there could be

<sup>81</sup> *Official Journal*, December 1931, pp. 2365-66.

no bargaining dependent upon the findings of a commission of inquiry. The only consideration precedent to the withdrawal of the Japanese troops, he said, was "the arrangement of details for securing the safety of life and property in the evacuated areas." Should the Council deem further assurances necessary in this respect "any reasonable arrangement involving neutral co-operation under the auspices of the League will be accepted." In order to make the Chinese position on the proposed commission entirely clear Dr. Sze the next day presented a memorandum containing the following three points:

1. In principle there can be no objection to a properly constituted commission to investigate and report upon the existing situation in Manchuria. Indeed, it is a step which might well have been taken two months ago had not Japan refused to entertain the suggestion.

2. I beg, however, to point out that the creation, at this juncture, of such a commission, however constituted and whatever the scope of its activity might be, is a purely illusory proposal unless it is based upon a simultaneously effective disposition covering the immediate needs of a situation which brooks no further delay. To put the matter more concretely, enquiry, without *at the same time* providing for immediate cessation of hostilities and for the withdrawal of Japanese forces (such withdrawal to begin at once and proceed progressively to prompt completion) becomes a mere device to condone and perpetuate for a more or less indefinite period the unjustifiable occupation of China's territory by an aggressor who has already virtually attained his unlawful objective while these discussions have been going on.

3. In the circumstances you will readily see that, as I tried to make plain at yesterday's meeting of the Council, it is quite impossible for me to consider the proposal in question, or to participate in working out the details connected with it, until the bases above mentioned have been adequately laid down.<sup>82</sup>

Under the guidance of Viscount Cecil and with the constant assistance of the Secretary-General and other higher officials of the Secretariat, the drafting of a resolu-

<sup>82</sup> League Document C. 885. M. 459. 1931. VII.

tion to establish the Commission of Inquiry was begun on November 22. The difficulties in the way of this seemingly simple task may be summarized by noting that it was December 9 before the next public meeting of the Council was convened to receive the text. Before examining any of these difficulties, however, it is important to consider why the Council took two months, during which the character of the dispute grew steadily worse, to agree in principle that a commission of inquiry on the scene was advisable.

#### THE FAILURE TO FOLLOW PRECEDENT

The issue was not being considered for the first time. On June 15, 1927, a committee of the Council authorized "to study certain questions arising out of the application of Article 11" had submitted its report to the Council.<sup>33</sup> This report was duly approved by the Council after its adoption "as a valuable guide" had been recommended by the eighth session of the Assembly.<sup>34</sup> Based upon actual practise under Article 11, as well as upon previous resolutions of the Assembly and Council, the report considered the advisability of sending a commission to the scene of dispute, both "where there is no threat of war or it is not acute" and "where there is an imminent threat of war." In the former case it was advised that:

If there is a doubt as to the facts of the dispute, a League commission may be sent to the *locus in quo* to ascertain what has actually happened or is likely to happen. It is understood that such a commission cannot go to the territory of either party without the consent of the State to which that territory belongs.

Where the situation embodies "an imminent threat of war," on the other hand, the report regarded as unneces-

<sup>33</sup> The full text is given in *Official Journal*, July 1927, pp. 832-33.

<sup>34</sup> *Official Journal*, S. S. No. 53, October 1927, p. 23.

sary the consent of the disputants to inquiry by a League commission on their territory:

In order to satisfy itself of the way in which these measures [various enumerated steps calculated to prevent hostilities] have been carried out and to keep itself informed of the course of events, the Council may think it desirable to send representatives to the locality of the dispute. . . . The Council may also have recourse in this connection to diplomatic personages stationed in the neighborhood who belong to States not parties to the dispute.

The procedural arguments therefore favored the dispatch of a League commission to Manchuria as soon as the Council was seized of the dispute under Article 11. Furthermore, every possible loophole whereby this implicit duty could properly have been evaded, seemed to have been closed in advance. Whether the dispute threatened war or not, the dispatch of Council representatives to the scene had four years earlier been defined as desirable in principle. The representatives of China and Japan in both the Assembly and Council had in 1927 approved this procedure and could have made no adequate defense against its application to the Manchurian dispute. In the event, China actively favored the appointment of a League commission at the outset, leaving Japan in a complete minority on the subject. The difficulty of defending that minority position is indicated by the fact that on previous occasions when Article 11 had been invoked, notably in the Greco-Bulgarian dispute of 1925, the Japanese representative on the Council had voted in favor of the prompt dispatch of League commissioners to the scene of the dispute.

Nevertheless, on the first evidence of resolute Japanese opposition to impartial inquiry the Council abandoned its clear right to assert a firm control in the Manchurian dispute. Six years earlier, when war between Greece and Bulgaria was threatened, the Council had exercised

dictatorial methods to secure cessation of military operations and had sent officers to the scene to supervise the execution of its instructions. These actions, amounting to intervention in the strict sense of the term, were taken without hesitation under Article 11.<sup>35</sup> Indeed, it was the wide competence attributed to the Council under this article which permitted action without prior establishment of fact. At the time of the Manchurian dispute both precedent and procedure for League intervention to stop hostilities had been clearly laid down. Yet in this instance the Council abandoned even its minimum right to take steps to ascertain the facts. In consequence, days of valuable time were wasted in listening to charges, counter-charges, and mutual recriminations which did nothing to advance solution of the problem. To point the complete contrast with the efficient handling of the Greco-Bulgarian dispute, Mr. James T. Shotwell's graphic description of Council action in that earlier case may be quoted:

In the autumn of 1925, almost at the very time the Great Powers were signing the Treaty of Locarno, a Greek army marched over the mountain frontiers of Bulgaria. In a border skirmish some Greek citizens had been attacked by the Bulgarians of Macedonia. In the name of defense, the defense of its citizens against Bulgarian outrages, a Greek army corps crossed the frontier, with all the accouterments of war. A second army corps was sent to its support and a third lay close at hand to follow. The refugees from sixty villages came fleeing into Bulgaria with tales of a Greek invasion and memories of the horrors of past Balkan wars with all their atrocities. Bulgaria, disarmed by the Treaty of Neuilly—its counterpart to the Treaty of Versailles—appealed for help to the League of Nations. The Council of the League was summoned by telegraph to meet immediately at Paris, the Foreign Minister of Sweden flying by airplane to reach the meeting-place in time. M. Briand presided. The representatives of Greece and Bulgaria in Paris were summoned to the Council table and the

<sup>35</sup> Compare T. P. Conwell-Evans, *The League Council in Action*, pp. 53-54.

session began. First, the Bulgarian Minister was turned to, but as he began to speak of the justice of Bulgaria's case, M. Briand raised his hand and refused to listen. He stated that the Council was not there to judge the justice of the case but to arrange that subsequent justice should be done. There was therefore just one question to which the Bulgarian should reply and that was whether or not Bulgaria would withhold hostilities and accept the judgment of a commission appointed by the League of Nations to judge the facts in proper form. The Bulgarian Minister, mastering his disappointment, accepted the League proposal and stated that Bulgaria would not engage in hostilities either before or during the negotiations of the commission.

M. Briand then turned to the Greek Minister. But Greece was already involved, and its situation was more difficult. Instructions had to be received from Athens before the Greek assent could be given to the demands of the League. Next day, however, that assent was forthcoming and a commission of inquiry investigating the facts both on the scene of invasion and at the capitals of the two countries assessed the costs of the invasion upon Greece, which paid to Bulgaria some 30,000,000 levas (\$210,000). The frontier posts were drawn back on each side of the hilltops which constituted the frontier, and a few Swedish *gendarmes* watched over peace in the Balkans.<sup>38</sup>

On the other hand, it must be emphasized that the Sino-Japanese controversy was of a far more complicated and intractable character than the superficially similar dispute between Greece and Bulgaria. Expeditious and authoritative handling on the part of the Council was rendered more difficult by the distance of the setting from Geneva; by the evident willingness of certain powerful League members to evade their international responsibilities; by the highly complicated background of the dispute; by the absence of effective neutral military forces; by the weak control and unsatisfactory nature of Chinese government in the area; by the deficiencies of national authority in that country; by the special treaty

<sup>38</sup> *War as an Instrument of National Policy*, pp. 210-12.

rights and privileges of Japan; by the commanding position of the Japanese military caste; by the uncoöperative attitude of Tokyo; by the exceptional interest of Russia and the United States in the dispute; and by the inability to forecast the policy which these non-member States would follow. In addition, the outbreak of the dispute coincided, in a remarkable manner, with the culmination of a number of urgent problems which, in September 1931, were overtaking the abilities and powers of the leading members of the Council.

Moreover, the evidence indicates that the normal step of appointing a commission of inquiry would almost certainly have been taken at the outset, even in spite of Japanese unwillingness, if the United States had at that time supported the effort to make this move. American indifference, if not opposition, to the step strengthened the Laodicean element in the Council, enabling Japan to block co-operative intervention. In two months' time, after Manchuria had been completely detached from Chinese control, Japan somewhat sardonically proposed the very commission of inquiry which it had at first opposed. The United States then indorsed the step.

#### THE RESOLUTION OF DECEMBER 10

On November 22 the Council in secret session began work on the draft resolution appointing the belated Commission of Inquiry, seeking a formula which would meet both the Chinese demand that Japanese troops be withdrawn within a specified period and the Japanese refusal to promise evacuation. In this difficult task encouragement was given by a statement from Mr. Dawes, made public on November 25, saying:

The United States government approves the general plan of settlement embodied in the proposed resolution of the Council and has so informed both China and Japan. It has urged



upon them acquiescence in the general plan embodied in the proposed resolution.<sup>87</sup>

Any undue optimism was quickly quenched, however, by Japanese threats to capture Chinchow, at the southern extremity of Manchuria, the only large city in the Three Eastern Provinces which had up to that date escaped Japanese control. Frequent reports which British, French, American, and other observers sent to their governments, and by these immediately transmitted to the Council, cast doubt on the Japanese charges of banditry and Chinese troop concentrations.<sup>88</sup> Nevertheless the Japanese government on November 28 informed the Council of its desire to have all Chinese troops withdrawn from Chinchow behind the Great Wall, adding that if this were done:

The Japanese government would be prepared to undertake in principle that Japanese troops would not enter the zone thus evacuated by the Chinese troops, except in the unexpected case of serious and urgent circumstances threatening the safety of the lives and property of Japanese nationals in Northern China and the safety of the Japanese troops stationed therein.<sup>89</sup>

Here, as later at Shanghai, the Japanese government, in demanding a withdrawal of Chinese troops, was taking upon itself a function which belongs to the authoritative League organs, and which is in no sense a prerogative of a single League member. Moreover, as evidenced by the one-sided nature of the above conditions the Japanese attitude at this time was making it very difficult to secure unanimity of the entire Council on any resolution, as is necessary under the terms of Article 11. The Japanese objection to neutral observers assisting in the establishment of a neutral zone around Chinchow was resented by

<sup>87</sup> 72 Cong. S. doc. 55, p. 41. An obvious misprint in this official source has been corrected above.

<sup>88</sup> See, for instance, League Documents C. 958. M. 523. 1931. VII and C. 936. M. 501. 1931. VII.

<sup>89</sup> League Document C. 940. M. 505. 1931. VII.

several members of the Council. Latin American representatives, in particular, were opposed to any recognition of the Japanese claim of a right to take "police measures" against "bandits" in the occupied area.

In the threatened impasse the chief constructive action came from Dr. Sze, who, in view of informal assurances that Chinchow would not be attacked, indicated that it might be possible for China to accept a resolution which failed to set a definite time limit for the evacuation of Manchurian territory. Mr. Yoshizawa thereupon agreed that the resolution need give no formal sanction to the taking of "police measures" in Manchuria, provided that he would be allowed to make a statement on this point in accepting the resolution. With this Pyrrhic victory the twelve neutral members of the Council were perforce content, and on December 10, 1931 the following resolution was unanimously adopted:

#### THE COUNCIL

1. Reaffirms the resolution passed unanimously by it on September 30, 1931, by which the two parties declare that they are solemnly bound; it therefore calls upon the Chinese and Japanese governments to take all steps necessary to assure its execution, so that the withdrawal of the Japanese troops within the railway zone may be effected as speedily as possible under the conditions set forth in the said resolution;

2. Considering that events have assumed an even more serious aspect since the Council meeting of October 24;

Notes that the two parties undertake to adopt all measures necessary to avoid any further aggravation of the situation and to refrain from any initiative which may lead to further fighting and loss of life;

3. Invites the two parties to continue to keep the Council informed as to the development of the situation;

4. Invites the other members of the Council to furnish the Council with any information received from their representatives on the spot;

5. Without prejudice to the carrying out of the above-mentioned measures,

Desiring, in view of the special circumstances of the case, to contribute towards a final and fundamental solution by the two governments of the questions at issue between them;

Decides to appoint a commission of five members to study on the spot and to report to the Council on any circumstance which, affecting international relations, threatens to disturb peace between China and Japan, or the good understanding between them, upon which peace depends;

The governments of China and of Japan will each have the right to nominate one assessor to assist the commission.

The two governments will afford the commission all facilities to obtain on the spot whatever information it may require;

It is understood that, should the two parties initiate any negotiations, these would not fall within the scope of the terms of reference of the commission, nor would it be within the competence of the commission to interfere with the military arrangements of either party.

The appointment and deliberations of the commission shall not prejudice in any way the undertaking given by the Japanese government in the resolution of September 30 as regards the withdrawal of the Japanese troops within the railway zone.

6. Between now and its next ordinary session, which will be held on January 25, 1932, the Council, which remains seized of the matter, invites its President to follow the question and to summon it afresh if necessary.<sup>40</sup>

#### CONCILIATION ASPECT OF COUNCIL COMMISSION

Commenting upon this resolution in his capacity as president of the Council, M. Briand pointed out that it provided for action along two separate lines: termination of the immediate threat to peace and facilitation of a final solution for existing causes of dispute between the two countries. The distinction is important since the Council has throughout added to its function as guardian of the peace that of conciliator. In attending to this second duty Council methods, while often slow, have generally been sure.

<sup>40</sup> *Official Journal*, December 1931, pp. 2374-75.

In contrast with the technique of pre-war diplomacy, often seeking to arrange a workable compromise which would suffice to tide over an immediate emergency, the Council has always sought to find or forward a lasting solution. Its commissions of inquiry, chosen not by the disputants but by the neutral members of the Council, have been of great value as conciliation agencies. Having the power "to contribute towards a final and fundamental solution," and possessing a direct mandate from a permanent organization of fifty-five States, these Council agencies represent a distinct advance on conciliation commissions of the past. While the Council commission established by the resolution of December 10 itself possessed only advisory powers, it operated under extremely wide terms of reference. As defined by M. Briand:

In principle no question which it feels called upon to study will be excluded provided that the question relates to any circumstances which, affecting international relations, threaten to disturb peace between China and Japan, or the good understanding between them upon which peace depends. Each of the two governments will have the right to request the commission to consider any question the examination of which it particularly desires. The commission will have full discretion to determine the questions upon which it will report to the Council, and will have power to make interim reports when desirable.

If the undertakings given by the two parties according to the resolution of September 30 have not been carried out by the time of the arrival of the commission, the commission should as speedily as possible report to the Council on the situation.

It is specially provided that "should the two parties initiate any negotiations, these would not fall within the scope of the terms of reference of the commission, nor would it be within the competence of the commission to interfere with the military arrangements of either party." This latter provision does not limit in any way its faculty of investigation. It is also clear that the commission will enjoy full liberty of movement

in order to obtain the information it may require for its reports.<sup>41</sup>

Reservations to the resolution of December 10 were laid down by both China and Japan.<sup>42</sup> Those of the former Power were specific safeguards of its sovereignty in Manchuria and reserved claims for reparations and damages. Acceptance by the Japanese government was based on the understanding that the resolution was:

... not intended to preclude the Japanese forces from taking such action as may be rendered necessary to provide directly for the protection of the lives and property of Japanese subjects against the activities of bandits and lawless elements rampant in various parts of Manchuria. Such action is admittedly an exceptional measure called for by the special situation prevailing in Manchuria, and its necessity will naturally be obviated when normal conditions shall have been restored in that region.

Following the adoption of the resolution very interesting comments thereon were made by the three Latin American representatives on the Council, Señores Matos of Guatemala, Garay of Panama, and Gonzalez-Prada of Peru. All agreed that the League cannot tolerate the doctrine that military occupation of territory may be employed to impose direct negotiations on matters at issue between two States. All asserted that the right of a State to safeguard the lives and property of its nationals abroad must be limited by respect for the sovereign rights of other nations. These thinly veiled attacks upon the Japanese position were reinforced by M. Briand's conclusion that except in the case of express treaty stipulation the Covenant does not authorize a State, no matter how well-founded its grievances against another State, to seek redress by other than peaceful means, a responsibility which the Pact of Paris strengthens and re-affirms.

<sup>41</sup> *Official Journal*, December 1931, p. 2375.

<sup>42</sup> *The same*, pp. 2376-77.

With this trenchant reminder the great French advocate of better international organization closed the last Council session to enjoy the benefit of his extraordinary diplomatic skill.

#### AMERICAN INDORSEMENT OF THE COMMISSION

On the day of the adoption of this Council resolution it was given strong indorsement by the United States government, which had already agreed to the appointment of an American member on the Commission of Inquiry, in a statement by Secretary of State Stimson. This included a warning against the use of "military pressure" in obtaining "the ultimate solution of the Manchurian problem":

The government of the United States is gratified at the unanimous adoption by the Council of the League of Nations of the resolution of December 10. This represents a definite step of progress in a long and difficult negotiation which M. Briand and his associates have conducted with great patience.

The Council of the League of Nations was in session on September 18, when the present situation in Manchuria first developed. China at once appealed to the Council under Article 11 of the League Covenant. The Council took immediate cognizance of this appeal, and China and Japan participated in the discussions before it in accordance with their obligations as parties to the Covenant. This government has from the beginning endeavored to co-operate with and support these efforts of the Council by representations through the diplomatic channels to both Japan and China. Not only are the American people interested in the same objective sought by the League of preventing a disastrous war and securing a peaceful solution of the Manchurian controversy, but as a fellow-signatory with Japan and China in the Kellogg-Briand Pact and the so-called Nine-Power Treaty of February 6, 1922, this government has a direct interest and obligation under the undertakings of those treaties.

The present resolution provides for the immediate cessation of hostilities. It re-affirms the solemn pledge of Japan to withdraw her troops within the railway zone as speedily as

possible. It provides for the appointment of a commission of five members to study on the spot and report to the Council on any circumstance which disturbs the peace or affects the good understandings between China and Japan. Such a provision for a neutral commission is in itself an important and constructive step toward an ultimate and fair solution of the intricate problem presented in Manchuria. It means the application with the consent of both China and Japan of modern and enlightened methods of conciliation to the solution of this problem. The principle which underlies it exists in many treaties of conciliation to which the United States is a party and which have played in recent years a prominent part in the constructive peace machinery of the world. The operation of such a commission gives time for the heat of controversy to subside and makes possible a careful study of the underlying problem.

The ultimate solution of the Manchurian problem must be worked out by some process of agreement between China and Japan themselves. This country is concerned that the methods employed in this settlement shall, in harmony with the obligations of the treaties to which we are parties, be made in a way which shall not endanger the peace of the world and that the result shall not be the result of military pressure. These are the essential principles for which the United States and the nations represented on the Council have been striving and it is in itself a signal accomplishment that there has been arrayed behind these principles in a harmonious co-operation such a solid alignment of the nations of the world.

On the other hand the adoption of this resolution in no way constitutes an endorsement of any action hitherto taken in Manchuria. This government, as one of the signatories of the Kellogg-Briand Pact and the Nine-Power Treaty, cannot disguise its concern over the events which have there transpired. The future efficacy of the resolution depends upon the good faith with which the pledge against renewed hostilities is carried out by both parties and the spirit in which its provisions directed toward an ultimate solution are availed of. The American government will continue to follow with solicitous interest all developments in this situation in the light of the obligations involved in the treaties to which this country is a party.<sup>43</sup>

<sup>43</sup> 72 Cong. S. doc. 55, pp. 46-47.

The Sino-Japanese dispute, as this notable declaration intimated, was still far from settlement. Immediately on the heels of the Council adjournment the Wakatsuki government in Japan fell from power and was replaced by the more conservative administration of Premier Inukai, who summoned Mr. Yoshizawa, his son-in-law, back from Paris to serve as foreign minister. On January 2, Japanese troops seized Chinchow, confirming their military command of all Manchuria. Almost simultaneously the full membership of the League's Commission of Inquiry was announced as: General Henri Claudel (France), Dr. Heinrich Schnee (Germany), Lord Lytton (Great Britain), Count Luigi Aldovrandi Marescotti (Italy), and General Frank R. McCoy (United States).

#### THE UNITED STATES IMPLEMENTS THE PACT OF PARIS

Immediately following the fall of Chinchow, on January 7, 1932, the United States government on its own initiative took the strongest move yet to be made by a neutral Power in the Far Eastern crisis. Giving a lead to the League Council, instead of accepting one therefrom, Secretary Stimson announced the intention of the United States not to recognize "any situation, treaty or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris." This announcement was made in the form of identic notes sent to the governments of China and Japan, and delivered simultaneously to the diplomatic representatives in Washington of the other signatories of the Nine-Power Treaty of 1922. The first paragraph of the first article of this treaty pledges the contracting Powers, other than China: "To respect the sovereignty, the independence and the territorial and administrative integrity of China."

This Stimson note stands out as a most important definition of policy, suggesting for the first time that a form



of pressure would be invoked by the United States to support the moral obligation of the Pact of Paris. The text of the note follows:

With the recent military operations about Chinchow, the last remaining administrative authority of the government of the Chinese Republic in South Manchuria, as it existed prior to September 18, 1931, has been destroyed. The American government continues confident that the work of the neutral commission recently authorized by the Council of the League of Nations will facilitate an ultimate solution of the difficulties now existing between China and Japan. But in view of the present situation and of its own rights and obligations therein, the American government deems it to be its duty to notify both the government of the Chinese Republic and the Imperial Japanese government that it cannot admit the legality of any situation *de facto*, nor does it intend to recognize any treaty or agreement entered into between those governments, or agents thereof, which may impair the treaty rights of the United States or its citizens in China, including those which relate to the sovereignty, the independence, or the territorial and administrative integrity of the Republic of China, or to the international policy relative to China, commonly known as the Open Door policy; and that it does not intend to recognize any situation, treaty or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928, to which treaty both China and Japan, as well as the United States, are parties.<sup>44</sup>

#### JANUARY SESSION OF THE COUNCIL

Although the tenseness of the situation was in no way diminishing, and although daily "incidents" were beginning to create a very strained situation at Shanghai, no further meeting of the Council was called prior to the scheduled convening of its sixty-sixth session at Geneva, on January 25.

Four days before this session opened the Commission of Inquiry, with United States Consul Prentiss Gilbert

<sup>44</sup> The same, pp. 53-54.

representing the American member, met at Geneva, elected Lord Lytton as its president, and prepared to depart for the Far East via the United States. Several Secretariat officials were assigned to accompany and assist the mission, the expenses of which the governments of China and Japan agreed to defray in equal shares. Criticisms of the fact that the Commission was entirely selected from States with permanent seats on the Council, plus the United States, were met on the opening day of the session by a statement from the new president, M. Paul-Boncour of France, that "the course followed in this particular case cannot in any way be regarded as implying the deliberate adoption by the Council of a procedure which would place the settlement of certain matters exclusively in the hands of its permanent members."<sup>45</sup>

Charges that there had been undue delay first in the organization and then in the departure of the Commission were not so easily answered. It was February 3 before the European members of the Commission sailed from France, and the full body did not reach the Orient until the end of February, almost three months after adoption of the Council resolution authorizing its creation, and more than five months after the outbreak of Sino-Japanese hostilities. While this delay perhaps permitted "the heat of the controversy to subside," in the words used by Mr. Stimson on December 10, it is to be remembered that League commissions under Article 11 had previously been supposed to investigate an emergency as it arose rather than when it was over.

When the sixty-sixth session of the Council assembled on January 25 the representation of both China and Japan had been changed, Dr. W. W. Yen replacing Dr. Sze for the former nation, and Naotake Sato filling the seat previously occupied by Mr. Yoshizawa for the latter.

<sup>45</sup> *Official Journal*, March 1932, p. 326.

On the opening day Dr. Yen showed his intention to push the Chinese case vigorously. He hinted repeatedly that the course of events was making it imperative for China to invoke further articles of the Covenant, since procedure under Article 11 was bringing no solution of the dispute. And in his references to Japanese policy he abandoned diplomatic language to use such adjectives as "cynical" and "ruthless" to Mr. Sato's face.

The early meetings of the session were, however, for the most part concerned with normal business before the Council. The curious and complex nature of this political organism was never better demonstrated than when, in a perfectly natural manner, Mr. Sato turned from his function as a litigant in the Sino-Japanese dispute to fulfill his duties as *rapporteur* in questions concerning the protection of minorities in Upper Silesia. Similarly, Dr. Yen, who was disposed to be highly critical of the Japanese representative's observations on events in the Far East, accepted without demur the latter's conclusions on Silesian minorities problems. It was a graphic illustration of the broadly executive nature of the Council's functions, and its ability to perform these diverse functions, with the aid of the departmentalized Secretariat, in a manner transcending personal and national feeling.

#### INVOCATION OF ARTICLES 10 AND 15

Shortly after midnight on the morning of January 29 came the anticipated explosion at Shanghai. During the previous evening the Council representatives, other than those of China and Japan, had informally discussed a declaration indorsing that made by Secretary Stimson on January 7, whereby intention not to recognize any agreements made as a result of Japanese military action would have been made by the Council, excluding the disputants. It had been planned to consider this further on January 29 but the move was postponed when, on that

morning, the Chinese representative invoked both Articles 10 and 15 of the Covenant. Dr. Yen's letter to the Secretary-General, taking this action, was as follows:

Under instructions from my government, I have the honour hereby to give notice as follows:

1. A dispute between two members of the League of Nations, to wit: China and Japan, arising from the aggression of the latter against the territorial and administrative integrity and political independence of the former in violation of the provisions of the Covenant of the League of Nations, exists.

2. This dispute has not been submitted to arbitration or to judicial settlement in accordance with any of the articles of the Covenant.

3. The said dispute has now reached a stage when it is likely to lead to an immediate rupture between China and Japan.

4. China hereby invokes the application (not in derogation of the measures taken, or which may be taken by the League in the exercise of its functions under Article 11, but in addition thereto) both of Article 10 and of Article 15 of the Covenant to the said dispute and formally submits the said matter to the Council for all appropriate and necessary action under both of said articles.

5. For this purpose China begs leave to refer to, and hereby adopts as and for the statement of its case comprising the relevant facts and papers in relation to said matter, all the statements and papers heretofore made and submitted by China in the proceedings of the Council taken in said controversy under Article 11 of the Covenant from September 18, 1931, to the date hereof.<sup>46</sup>

The implications of the invocation of Articles 10 and 15 were unequal, having much greater immediate importance in the latter case. The weak point in Article 10, as already pointed out,<sup>47</sup> lies in the provision that "the Council shall advise upon the means by which this obligation shall be fulfilled." Without considering the uncertain legal force of the word "advise," it is to be noted that this article requires unanimity on the part of

<sup>46</sup> The same, pp. 335-36.

<sup>47</sup> See p. 89 above.

the Council, no provision to the contrary being made therein. In consequence, the Power against which this article is invoked can readily block Council action thereunder by the simple procedure of denying that its policy either constitutes or threatens "aggression." In the absence of any body authoritatively empowered to define aggression, and of any automatic definition of that action, it appears possible for a determined government to carry out the most far-reaching military policy under the guise of "self-defense."<sup>48</sup>

Article 15, on the other hand, permits the taking of certain definite measures over the active opposition of a disputant. Under its first paragraph "a full investigation" of the dispute is mandatory, the Secretary-General being required to "make all necessary arrangements" in this connection. Under the fourth paragraph of the article, failing a settlement of the dispute, the Council must publish a report, with recommendations, thereon. This action may be taken by majority vote. Finally, resort to war in disregard of its obligations under Article 15 immediately makes the delinquent State liable to the sanctions provisions of Article 16. And while the Covenant makes no provision for a definition of "resort to war," failing a declaration of war, such action is more readily definable than the "external aggression" of Article 10, since it does not require consideration of the infinitely elastic factor of self-defense.

#### JAPAN CHALLENGES COUNCIL COMPETENCE

Because of the greater potentialities of Article 15 its invocation by China was met with an immediate Japanese challenge as to the right of the Council to take simul-

<sup>48</sup> In its statement of Feb. 23, 1932 the Japanese government, having then approximately one hundred thousand soldiers on Chinese soil asserted that: "The measures of Japan, strictly defensive, do not infringe the provisions of that article [10]." See p. 492 below.

taneous action under more than one article of the Covenant. In the threatening words of Mr. Sato: "As this is a very grave matter, capable of compromising even the peace of the world, I cannot but attach great importance to the question of procedure." The point, which is of obvious constitutional importance, was decided against the Japanese contention in favor of the right of the Council, which may now be said to be permanently established, to invoke Article 11 and 15 both progressively and simultaneously.

In establishing the Council's prerogative in this matter the President (M. Paul-Boncour of France) showed first that it is not incumbent upon the Council, when Article 15 has been invoked by a party to a dispute, to decide whether this request is justified. To substantiate this viewpoint he aptly quoted the opinion of a committee of jurists established to consider this very issue in 1923. The President pointed out that this committee was presided over by the eminent Japanese jurist, Mineitcuro Adatci, "who is a compatriot of M. Sato and is at present president of the Permanent Court of International Justice." The opinion of this committee, unanimously indorsed by the Council at its meeting on March 13, 1924, was that:

The Council, when seized at the instance of a member of the League of Nations of a dispute submitted, in accordance with the terms of Article 15 of the Covenant, by such a member as "likely to lead to a rupture," is not bound, either at the request of the other party or on its own authority, and before enquiring into any point, to decide whether in fact such description is well founded. The Council may at all times estimate the gravity of the dispute and determine the course of its action accordingly.<sup>49</sup>

The President of the Council then proceeded to affirm the right of that organ to take simultaneous action under Articles 11 and 15, asserting that proceedings initiated

<sup>49</sup> *Official Journal*, March 1932, p. 340.

under the former article are in no way affected by invocation of the latter:

The League of Nations has always considered that the Council's action under Article 15 is in no way incompatible with any measures which may have been adopted—in the present case measures have in fact been adopted under Article 11—with a view to preventing any disturbance of the peaceful relations of the two countries concerned; and, while the initiation of procedure based on Article 15 does not preclude such measures being taken, it is not incompatible either with the carrying out of such measures, if they have been adopted in virtue of previous resolutions and are actually being put into effect.

This ruling has not merely the support of logic; it was laid down on two occasions on which the League was called upon to express its opinion on the matter. On May 31, 1920, at its sixth session, the Council had to deal with a note from Czechoslovakia appealing to Articles 11 and 15 of the Covenant conjointly. In point of fact the Council did not deem it necessary to proceed with the question; but that was for reasons bearing upon the merits of the case and on grounds of expediency only; there was no suggestion, at the time, of any conflict between Articles 11 and 15.

But, above all, I should like to remind the Japanese representative of a provision which I am sure he has not forgotten, as both he and I were privileged to assist in its preparation. I refer to the resolution of September 26, 1927, which gives a ruling as to the interpretation of Article 11 and the methods of its application. That resolution explicitly indicates that proceedings initiated under Article 11 in no wise preclude those which may be initiated under other stipulations of the Covenant.<sup>50</sup>

#### THE CONSULAR COMMITTEE AT SHANGHAI

The Japanese protest against simultaneous action having been disposed of, the President called upon the Secretary-General to explain the "necessary arrangements" contemplated by him under the first paragraph of Article 15. In reply Sir Eric Drummond asked for a

<sup>50</sup> The same, p. 341.

day's delay in order, it was reported at the time, to endeavor to obtain American representation on the consular committee which he proposed to form at Shanghai.<sup>51</sup> His action under Article 15 (1) has been discussed in an earlier chapter.<sup>52</sup> To that consideration of the extraordinary powers of the Secretary-General there need only be added a statement regarding his competence made by Sir Eric Drummond at the Council meeting on January 30, in reply to a question by Dr. Yen as to "the measures that the Secretary-General proposes to take under the provisions of Article 15 to put an end to the occupation of Manchuria by the Japanese army." The Secretary-General replied:

I cannot help feeling that the Chinese representative is under some misapprehension as to the role of the Secretary-General in this matter. If he will look at Article 15, which he himself has invoked and with which I am sure he is therefore thoroughly acquainted, he will see that the duties of the Secretary-General are confined to making the necessary arrangements for a full investigation of the dispute and consideration thereof. It is not for him to propose measures to settle it. That is the duty of the Council under paragraph 3 of Article 15, which definitely indicates that the Council should endeavour to effect a settlement of the dispute. The Secretary-General is only entitled to obtain information.

I did not make these proposals to the Council as a whole; I made them, within my rights, to those members who had representatives at Shanghai during the period when the events occurred, and I asked them if they would agree to their representatives forming a committee to send me information for ultimate consideration by the Council.

As regards the rest of the question, there is no idea of dissociating the events at Shanghai from the rest of the question. I simply said—and I think that too is within my competence—that the measures already taken by the Council in that connection were, in my view, sufficient.<sup>53</sup>

<sup>51</sup> *New York Times*, Jan. 30, 1932.

<sup>52</sup> See pp. 310–11 above.

<sup>53</sup> *Official Journal*, March 1932, pp. 343–44.



The elusive nature of official American co-operation with the League was again emphasized when the Department of State, asserting that such action would be *ultra vires*,<sup>54</sup> refused to appoint an American representative on the League's consular committee at Shanghai. The committee, however, was promptly formed from diplomatic representatives in that city of six Council members—France, Germany, Great Britain, Italy, Norway, and Spain—with the director of the Secretariat's Transit Section, then in Shanghai, as its secretary. Under instructions from Washington the American Consul-General co-operated with, while he abstained from membership on, this League body.

During the next few weeks the committee sent periodic and helpful reports to the Council, the most important being that dated February 12 and published at Geneva two days later. Herein it was flatly stated that: "Since the third of February a state of open war has existed, any pretense of a truce being abandoned. . . . The offensive is entirely in the hands of the Japanese, whose declared object is to capture the Woosung forts and drive all Chinese troops a considerable distance from Shanghai."<sup>55</sup>

#### REFERENCE OF DISPUTE TO ASSEMBLY

As was demonstrated during the early days of February, the invocation of Articles 10 and 15 by the Council had proved as useless as reliance on Article 11 to terminate Japan's large-scale military operations on Chinese soil. Independent efforts by the governments of Great Britain and the United States to arrange a truce and establish a

<sup>54</sup> Department of State: *Press Release*, Feb. 1, 1932.

<sup>55</sup> On Jan. 30 Mr. Sato had informed the Council that "The wild story about the Japanese attack on the Woosung forts is groundless." (*Procès Verbal*, sixty-sixth Council session, seventh meeting, p. 22.) Such discrepancies between official statements before the Council and actual policy as later revealed are illustrative of the vital importance of local fact-finding committees to inform the Council during its handling of disputes.

neutral zone between the Japanese and Chinese forces at Shanghai proved equally futile. Accordingly, the Chinese government, still pinning its faith on League action, on February 12 referred the dispute to the Assembly. This action was taken on the last day permissible under paragraph nine of Article 15, which provides for reference of the dispute to the Assembly at the request of either party, if made within two weeks of the submission of the dispute to the Council under Article 15.

For as long as possible the Chinese representative delayed taking this unprecedented action, hoping in vain that the Council would utilize its own right to convoke an emergency session of the Assembly, as stipulated in Article 15(9). This hope of action by the Council itself was apparent in the text of Dr. Yen's request that the Assembly be convoked:

With regard to the Sino-Japanese dispute, of which the Council has been seized under Articles 10, 11, and 15 of the Covenant of the League of Nations, I have the honour to observe that according to Article 15, paragraph 9, of the said Covenant, it is within the competence of the Council to refer the case to the Assembly. At the same time it is also provided that the dispute shall be so referred at the request of either party, provided that such request be made within fourteen days after the submission of the dispute to the Council.

In view of the time limit imposed, the Chinese government is constrained hereby to request that the said dispute be referred to the Assembly. If, however, it should be the pleasure and intention of the Council to refer the said dispute at its own initiative to the Assembly, or in virtue of the general powers vested in it to summon the Assembly for consideration of the dispute, the Chinese government will then be prepared to withdraw the request on its part.

In accordance with the policy of impeding League action, which Japan had pursued from the outset, that government sought to raise technical legal objections to the convocation of a special Assembly session. These

objections necessitated the appointment of a Council committee of jurists to give them consideration, this committee deciding on February 18 that the Japanese contentions were without validity. On the following night, three hours before the "zero hour" set by the Japanese military command for a great offensive to throw the defending Chinese army back from Shanghai, the Council referred the Sino-Japanese dispute to the Assembly under Article 15 (9) and summoned an extraordinary session of the Assembly to convene on March 3, 1932. This resolution emphasized that "the duty of the Council to continue its work for the maintenance of peace in accordance with the Covenant remains unaffected by the present decision."<sup>56</sup> But it could not conceal the fact that in its primary duty of maintaining the peace of the world the Council had failed and that the role of moral leadership had in consequence passed to the Assembly.

#### THE COUNCIL WARNS JAPAN

One last action by the Council, in some respects the most important of all during the five-month period covered by this chapter, was taken before authority in the dispute was transferred to the Assembly. All the neutral members of the Council on February 16 addressed to Japan alone a note strongly intimating that claims imposed on China by force ought not "to be recognized as valid and effectual by the members of the League of Nations." This note, the first drafts of which were prepared in the League Secretariat, on Secretariat initiative, drew virtually the same conclusions from Article 10 of the Covenant that Secretary Stimson's note of January 7 had drawn from the Pact of Paris, thereby giving far-reaching impetus to the practical harmonization of the Pact and Covenant. The text of the note, which preceded

<sup>56</sup> The text of this resolution, as adopted by the Council, is found in the *Official Journal*, March 1932, pp. 371-72.

by two days the Japanese-sponsored declaration of Manchurian independence from China, was as follows:

1. The President of the Council, on behalf of his colleagues, pointed out on January 29, in an appeal addressed to both parties, that:

Good relations between States could only be secured by co-operation and mutual respect and that no permanent solution could be achieved by force, whether military or merely economic, and that the longer the present situation continued the wider the breach between the two peoples would become and the more difficult the solution would be, with all the disasters that would mean, not only to the two nations directly involved but to the world in general.

2. The twelve members of the Council, other than the Chinese and Japanese representatives, feel constrained today to make a pressing appeal to the government of Japan to recognize the very special responsibility for forbearance and restraint which devolves upon it in the present conflict in virtue of the position of Japan as a member of the League of Nations and a permanent member of its Council.

3. The situation which has developed in the Far East during the past months will be fully studied by the commission appointed with the consent of both parties. But, since the commission was set up, there have occurred, and are still occurring, events at and in the region of Shanghai which have intensified public anxiety, which endanger the lives and interests of the nationals of numerous countries, add to the unexampled difficulties with which the whole world is faced during the present crisis, and threaten to throw new and serious obstacles in the path of the Disarmament Conference.

4. The twelve members of the Council are far from disregarding the grievances advanced by Japan and throughout all these months have given her the full confidence which they owed to an associate of long standing, who had ever been punctilious in the fulfillment of all her obligations and duties as a member of the community of nations.

They cannot but regret, however, that she has not found it possible to make full use of the methods of peaceful settlement provided in the Covenant, and recall once again the solemn undertaking of the Pact of Paris that the solution of international disputes shall never be sought by other than peaceful means.

The twelve members of the Council cannot but recognize that, from the beginning of the conflict which is taking place on her territory, China has put her case in the hands of the League and agreed to accept its proposals for a peaceful settlement.

5. The twelve members of the Council recall the terms of Article 10 of the Covenant, by which all the members of the League have undertaken to respect and preserve the territorial integrity and existing political independence of other members.

It is their friendly right to direct attention to this provision, particularly as it appears to them to follow that no infringement of the territorial integrity and no change in the political independence of any member of the League brought about in disregard of this article ought to be recognized as valid and effectual by the members of the League of Nations.

6. Japan has an incalculable responsibility before the public opinion of the world to be just and restrained in her relations with China. She has already acknowledged this responsibility in most solemn terms by becoming one of the signatories to the Nine-Power Treaty of 1922, whereby the contracting Powers expressly agreed to respect the sovereignty, the independence and the territorial and administrative integrity of China. The twelve members of the Council appeal to Japan's high sense of honor to recognize the obligations of her special position and of the confidence which the nations have placed in her as a partner in the organization and maintenance of peace.<sup>87</sup>

#### JAPAN DENIES CHINA'S RIGHT TO PROTECTION

The Japanese reply to this communication from the President of the Council was destined to be of great significance in spreading the international implications of the Sino-Japanese dispute, and thereby in bringing the United States more deeply into the international considerations for its settlement. Dispatched from Tokyo on February 23, and significantly made public by the Japanese Embassy in Washington on the same day, the reply consisted of a covering letter from Foreign Minister Yoshizawa to President Paul-Boncour of the Council, and of a lengthy statement issued in the name of the

<sup>87</sup> The same, pp. 383-84.

Japanese government. Mr. Yoshizawa's letter strongly deprecated "the growth of the practise of substituting for discussions by the Council of the League, discussions by a select committee of whatever composition." The Japanese government, he continued, "cannot but decline to recognize that these regular and repeated *ex parte* discussions are really compatible with the procedure of the League."

In the governmental statement there was introduced for the first time in the controversy the idea that China is not entitled to the protection of the League Covenant. The argument rested on that paragraph of the preamble which says that the Covenant was agreed to in order to promote co-operation, peace, and security "by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another." On this point the Japanese government's statement declared:

Finally, it must be emphasized that the Japanese government do not and cannot consider that China is an "organized people" within the meaning of the League of Nations Covenant. China has, it is true, been treated in the past, by common consent, as if the expression connoted an organized people. But fictions cannot last forever, nor can they be tolerated when they become grave sources of practical danger.

The time has inevitably come when realities, rather than fictions, must be reckoned with. The general desire to see China happy, prosperous and united, has led the world to treat her as united in a way in which, in sober fact, she was not. Its population is not organized except in patches.

If Japan had no interests there it might be possible to go on indefinitely respecting the fiction that the region is occupied by an "organized people." Japan, however, has enormous interests there.

It is impossible any longer to treat the chaos in China as if it were order. The authorities which subsist in various parts of China derive their title simply from the fact that they do exercise control within limited areas. But they can have no title to extend their control beyond them.

This anomalous state of things cannot but profoundly modify the application to Chinese affairs of the Covenant of the League. Instead of a single organized people, we have the various rudimentary nuclei of organization. The Japanese government do not pretend that it is easy to work out the implications and consequences of this situation. It is not easy but it is necessary.

We must face the facts, and the fundamental fact is that there is no unified control in China and no authority which is entitled to claim entire control in China.<sup>58</sup>

By this extraordinary statement the Japanese government declared itself competent to decide the status of China as an "organized people," and thereby inferentially declared that Japan alone would determine whether or not to respect treaty obligations with a fellow Council member.<sup>59</sup> While the challenge to the Council was unmistakable, the immediate response came not from that organ but from the government of the United States. Regardless of the status of the League Covenant, and in addition to the issue of violation of the Pact of Paris, it was felt in Washington that the position now taken by Japan menaced the security of the whole "Open Door" policy, traditionally based upon the preservation of China's territorial and administrative integrity.

#### THE UNITED STATES WARNS JAPAN

In an exceedingly able and important open letter to Senator Borah, as chairman of the Senate Committee on Foreign Relations, Secretary Stimson, on February 23, re-affirmed the intention of the United States to rest its

<sup>58</sup> The same, p. 386.

<sup>59</sup> To the Japanese charge that China is not a well-organized State the Chinese representative on the Council replied with the following *tu quoque*: "I wonder whether a State like Japan, with the army and navy running amok and out of the control of the government, is an organized State. When her diplomats come to the Council table and give promises one after another apparently in sincerity and good faith, and when these same promises are violated the next day, does that represent a well-organized government?" The same, p. 366.

policy towards China "upon an abiding faith in the future of the people of China and upon the ultimate success in dealing with them of the principles of fair play, patience and mutual good-will."

This letter, however, went far beyond its affirmation of a policy in sharp contradistinction to that of Japan. It delicately reminded the British Conservative government of pronouncements by its predecessors dissociating Great Britain from "the old practise of spheres of interest." It reminded Japan, not quite so delicately, that modification of the Nine-Power Treaty could involve modification of military agreements in the Pacific. It asserted that, "regardless of cause or responsibility," obvious violations of both the Nine-Power Treaty and the Pact of Paris had been brought about. And, most important of all, it virtually invited, and even urged, the forthcoming League Assembly to unite in a policy which would in the long run frustrate that of Japan. This momentous attitude stood out between the lines in the following paragraph of the Stimson letter:

On January 7 last, upon the instruction of the President, this government formally notified Japan and China that it would not recognize any situation, treaty, or agreement entered into by those governments in violation of the covenants of these treaties, which affected the rights of our government or its citizens in China. If a similar decision should be reached and a similar position taken by the other governments of the world, a *caveat* will be placed upon such action which we believe will effectively bar the legality hereafter of any title or right sought to be obtained by pressure or treaty violation, and which, as has been shown by history in the past, will eventually lead to the restoration to China of rights and titles of which she may have been deprived.<sup>80</sup>

It was not expected that Secretary Stimson's letter to Senator Borah would immediately affect the situation either at Shanghai or in Manchuria. In spite of every

<sup>80</sup> *Congressional Record*, daily edition, Feb. 24, 1932, p. 4718.



effort by the Council, strongly supported by the United States,<sup>61</sup> to arrange a truce at Shanghai, the Japanese military efforts were intensified during the last days of February. On the night of March 1 the Chinese troops were forced from their defensive lines outside the city. On March 9 Henry Pu Yi was proclaimed regent of an independent Manchuria in a ceremony at Changchun "said to have been arranged and paid for by Japanese agents."<sup>62</sup> In between these events, on March 3, the Assembly met to take from the Council the League's responsibility in the Sino-Japanese dispute.

#### WHERE AND WHY THE COUNCIL FAILED

As the record of this chapter will have indicated, very great efforts were made by the Council during the twenty-four weeks in which it handled the Sino-Japanese dispute prior to the emergency session of the Assembly. Nor was its achievement as inconsiderable as the net results of all this endeavor might seem to indicate. In spite of the tremendous advantages given to a single recalcitrant member by the unanimity rule, the Council was able to make Japan go clearly on record as having "no territorial designs" in Manchuria or elsewhere in China, and to secure pledges of withdrawal of Japanese troops into the zones where they are permitted by treaty, "as soon as possible." It further eventually secured Japanese assent to the appointment of a commission of inquiry with broad powers of investigation into the entire dispute and all its tangled background.

On three important points, moreover, the Council definitely overruled the Japanese government and forced its compliance with policies which Tokyo had resolutely and ably opposed. The first of these cases was in the

<sup>61</sup> See the *Minutes*, sixty-sixth session, fourteenth meeting, Feb. 29, 1932.

<sup>62</sup> *New York Times*, Mar. 10, 1932.

decision to invite the United States to sit with the Council. The second was in the decision that Article 15 of the Covenant could properly be invoked without prejudice to measures already initiated under Article 11. The third was in referring the whole dispute to the Assembly, where Japan's position was much weaker and less easily defended than was the case before the Council. In the Council, Japan is one of five Great Powers given legal superiority through the possession of permanent membership. In the Assembly, Japan, like any other League member, is one of fifty-five equals under international law.

In addition, it may be mentioned that Japan complied with the decision of the Council that one-half of the expenses of the Commission of Inquiry should be paid from its treasury, and also paid its pro rata share as a League member of the expenses involved in the work of the special consular committee at Shanghai. Furthermore, the Council ignored Japanese protests against actions taken without Japanese co-operation, and therefore at least extra-legal where the unanimity rule applies.

The failure of the Council to settle the dispute, in other words, is by no means entirely to be attributed to unwillingness on the part of that organ to face up to its responsibilities. In part the inability to restrain Japanese military policy effectively was due to the implicit safeguards afforded by the Covenant to a State which refuses to admit that what appears to be "external aggression" or "resort to war" is legally definable as such. The deficiencies of the Covenant in this respect were amply demonstrated during the Council's handling of the Sino-Japanese dispute. The organ itself, however, is not properly to be condemned for shortcomings in the act under which it operates. It was not merely weakness which restrained the Council from invoking the sanctions clauses of Article 16, but also legitimate uncertainty,

inherent in the vague wording of the Covenant, as to whether Japan could be held to have resorted to war in disregard of its solemn pledges under Articles 12, 13, or 15.

It is to be remembered, also, that the Council has no real power beyond that which its members are willing to attribute to it in any particular emergency. In the Sino-Japanese dispute no one of the four permanent members, other than Japan, was willing to exert more than moral pressure. Particularly was this true in the case of the two most powerful neutrals, Great Britain and France. For this attitude there were many political reasons, as distinct from organic weaknesses, which are not the concern of this study, except in so far as they collectively indicate that a similar attitude is to be expected whenever one of the Great Powers is willing to defy the League.

On the other hand, the most potent of the fundamental political obstacles to Council strength was also an organic defect. With the United States and Russia both non-members of the League, the incomplete nature of the Council as a concert of Great Powers was manifest. In the event, the United States on the whole strongly supported and even exercised leadership in the Council's policy, while Russia did nothing to oppose. But never was there certainty from day to day that the United States would continue to be co-operative, or that Russia would not be hostile, if the Council should inaugurate a drastic policy—perhaps stretching the Covenant to do so—which could succeed only with the wholehearted indorsement of the two powerful non-members.

The record of this chapter, which might well be entitled "The Council, the United States, and the Sino-Japanese Dispute," shows the tremendous influence of the American government on Council policy, an influence which was equally pronounced when the United

States led, when it followed, and when it abstained from full co-operation with the Council. The record also shows, implicitly, the extent to which the Department of State was hampered by not having a clear popular mandate for co-operation. It indicates, moreover, that where the Covenant or the Pact of Paris alone has proved inadequate, the two together may well in future prove effective. The story of the joint effort, made with an incomplete liaison between the Council and the Department of State, has shown that the Covenant is fragile against the sovereignty of a powerful League member. But it has also shown that the Pact of Paris can readily be implemented so as to have more than merely moral force. The Covenant is weaker and the Pact is stronger than public opinion was prone to believe before this dispute. The movement to harmonize these two nearly universal treaties has gained in vigor as a result of this lesson.<sup>68</sup>

For reasons which were both numerous and substantial, but not permanently irremediable, the Council failed to end the first really grave conflict which came before it. From the constitutional viewpoint the importance of this failure extends beyond its revelation of weaknesses in the Covenant, which Japan exposed ruthlessly, but in all probability with complete legality. At least equally important is the fact that the Council failed at a time when its position and powers within the framework of the League machinery were still not fully determined. The consequence, as it turned out, was a definitely increased emphasis in the tendency to curtail the prestige and authority of this League organ.

As has already been pointed out, and additional evidence will be found in the two following chapters, the original design and powers of the Council had prior to

<sup>68</sup> See p. 557 below.

1932 been greatly altered, both by Assembly and Secretariat encroachment. Only in one function—as the authorized guardian of world peace—had the Council preserved its original independence almost untrammelled up to the outbreak of the Sino-Japanese dispute. When that dispute was referred to the Assembly under Article 15(9) of the Covenant, Assembly authority in this supreme function was for the first time really established at Council expense. And when the Assembly, as will be noted later, decided to set up its own organization for further handling of the problem, the supreme role of the Council as designed at Paris in 1919 was profoundly and fundamentally modified.

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## CHAPTER XIII

### THE ASSEMBLY AS SOVEREIGN POWER

The annual Assembly of the fifty-five States which are members of the League is easily the most picturesque event of the year at Geneva. Every September these sessions make that city a Mecca for statesmen and a focal point of international political consideration without precedent in pre-war history. Entirely aside from the Assembly's world-wide significance as a regularly recurrent and nearly universal conference of nations, however, a basic constitutional importance pertains to the structural position which this body has come to fill within the mechanism of the League. Consideration of the Assembly must therefore include not merely its political character and its external competence, but first of all its powers and authority in relation to the other central organs of the League. Examination of this question of internal competence reveals that the constitutional evolution of the Assembly has been more pronounced, and more revolutionary, than that of any of these other organs.

The Covenant defines in some detail the powers of the Council. In addition, there are the many precedents of history for sporadic, and even periodic, action by the Great Powers in the fields of their common interests. The theory of the League's technical committees and commissions can be traced to the war-time experience of the principal Allies, and also may legitimately be called a logical development of international conference methods which were developing rapidly even before the war. The routine functions of the Secretariat had been closely thought out by British advocates of the League well

before the final adoption of its Covenant. But for the Assembly there was neither established precedent nor detailed plan. When the Covenant was written into the Treaty of Versailles the only prototypes of this "Parliament of Man" were in the dreams of poets and scarcely less visionary political philosophers.

#### THE ASSEMBLY AS FIRST DEFINED

In the minds of those who drafted the Covenant, moreover, the Assembly was not merely vague in outline, but also definitely subordinate in function. The first designs pictured it as composed of the ordinary diplomatic representatives of the various Powers at the Seat of the League, thus intimating that this body should have very little independence or power in the formulation of policy. It was even anticipated that in normal circumstances there would be no occasion for the Assembly to meet more frequently than once every four years, an expectation which sufficiently illustrates the degree of importance at first attributed to the agenda of the new "World Parliament."

These original plans for the Assembly became somewhat more positive during consideration by the Peace Conference Commission on the League. But from its definition in the original Covenant none could picture the Assembly as being more than a periodic conference of national (not necessarily governmental) representatives empowered to discuss almost any matter of international concern (Article 3); permitted to take action, except in matters of procedure and a few other specified cases, only on unanimous agreement (Article 5); entrusted with the duties of admitting new League members (Article 1) and of electing the four non-permanent Council members (Article 4); authorized to supplement the peace preservation machinery of the Council (Articles 11 and 15); and enabled to "advise the reconsidera-

tion" of inapplicable treaties (Article 19). Compared with the Council the organization of the Assembly was indefinite, its duties undetermined, its authority severely restricted.

In addition to being the more clearly visualized of the two bodies, the Council was also first in the field. When the first session of the Assembly was convened at Geneva on November 15, 1920, pursuant to the call of President Wilson as stipulated in Article 5(3) of the Covenant, its meetings synchronized with the eleventh session of the Council. In every previous month of this first year of the League's existence the smaller and more authoritative body had been in session, four times in Paris, thrice in London, once each in Rome, Brussels, and San Sebastian. The Council was a well-established organism, functioning smoothly, when the Assembly first came into being and confronted the problem of finding its place in the constitutional mechanism of the League.

#### THE ISSUE OF JOINT COMPETENCE

Moreover, before the first meeting of the Assembly, the Council had taken steps to insure for itself a position of constitutional priority. During its eighth session, meeting at San Sebastian from July 30 to August 5, 1920, a report on "Relations between the Council and the Assembly" was presented by the British representative, Mr. A. J. Balfour.<sup>1</sup> This report, adopted by the Council on August 2, emphasized the joint competence of the two organs. It pointed out that "the functions not only overlap, but in most important respects they are absolutely and literally identical." It advised the Council "to abstain from anything which brings into undue relief the collision of authority which is possible, though not probable, under the Covenant"—an admonition which, on the whole, has been observed with scrupulous care. But

<sup>1</sup> League Document 20/48/16.



at the same time this Balfour report observed that "while a large number of the functions entrusted to the League of Nations by the Covenant might be exercised either by the Assembly or by the Council, there are a certain number which can only be exercised by the Council, with the assent of the Assembly." And it laid down as a general principle, in all cases where the special competence of the two organs have not been clearly defined by formal stipulation in the Covenant or in a treaty, that:

If one of the organs of the League has dealt with a question coming within the sphere of their common activity, it is inopportune for the other organ to take measures independently with regard to this question.

Since the Council was at this time meeting on an average of once every month, and since it was as yet by no means certain that the Assembly would meet as frequently as once a year, the constitutional advantage which this arrangement would have given to the smaller and more easily convened body is obvious. Indeed, it would not have been inconceivable to picture an alert Council president summoning an emergency meeting of the Council, just before a scheduled Assembly session, for no other purpose than to "deal with a question" on which Assembly action would be deemed unwelcome by certain of the Great Powers.

The First Assembly, therefore, found itself filling a position tacitly secondary, if not subordinate, to the Council, a position which seemed the more difficult to alter because the leaders of the two most powerful delegations, Mr. Arthur Balfour of Great Britain and M. Léon Bourgeois of France, had also represented their respective nations on the Council for the majority of its meetings during 1920. It is a striking illustration of the independent spirit and the vitality which the Assembly has possessed from the beginning that it was able in its

first session to go a long way towards establishing a position far more commanding than any of the framers of the Covenant had ever anticipated.

When the First Assembly met it had before it, in addition to the Council report of Mr. Balfour referred to above, a memorandum by the Secretary-General entitled: "Legal Statement of the Competence of the Council and of the Assembly of the League of Nations, Respectively, as Stipulated in the Covenant and in the Treaties."<sup>2</sup> This statement, more concrete than the Balfour report, pointed out that in several cases under the Covenant and peace treaties powers are entrusted to "the League of Nations," without specification as to which League organ should take them in hand. In other words, there was an indeterminate area in which either the Council or the Assembly would have to assume control, a condition which did not discourage incipient rivalry between the two bodies. Furthermore, the Secretary-General's memorandum emphasized the state of diarchy under which the Assembly would have been pusillanimous not to assert itself, the document starting with the assertion that:

It follows from the texts of the Covenant that legally, and where no special rule to the contrary can be pointed out, the Council and the Assembly of the League of Nations are equally competent to take decisions on all matters within the sphere of action of the League or affecting the peace of the world.

The Covenant makes no general distinction between the powers of the Council and of the Assembly. . . .

As a result of the organization of the First Assembly into six committees, entrusted with the preparation of resolutions for submission to the plenary session, the first of these committees was then, as it has been ever since, authorized to deal with constitutional and legal questions. To its First Committee, in consequence, the First Assembly turned over the problem of considering in detail

<sup>2</sup> The text is given in *Records First Assembly*, First Committee, pp. 90-92.

the constitutional relations between the Council and the Assembly. Although the First Committee sat under the chairmanship of Mr. Balfour, who already seemed committed to the principle that the Council should be the predominant organ, its discussions clearly indicated the existence of a body of opinion anxious to alter the theory that "the Council is the power and the Assembly is the pageant," as it was phrased at the time by an Indian delegate.<sup>3</sup>

#### RELATIVE PERMANENCE OF ASSEMBLY AND COUNCIL

A major point on which discussion centered at this time concerned the relative permanence of the two organs. While the Covenant shows no legal justification for the distinction, the League started with a quite general assumption that the Council was a continuous body, maintaining a corporate existence between its sessions, while the Assembly was viewed as a temporary entity, calling for continuous reconstruction. From this assumption sprang the custom of referring to the *first session* of the Council, as contrasted with the *First Assembly*, the numeral in the one case designating the temporary meeting of a permanent organ, in the other emphasizing the recurrent nature of a temporary body. The distinction was not merely a matter of convenience in writing, as which it is sometimes used in this study, but was at the outset made in official documents.

The point was emphasized by several speakers on the floor of the first session of the Assembly, notably by Lord Robert Cecil when he made the prediction that the Council would develop the executive functions of a cabinet even though the Assembly, for its part, should fail to develop the power of parliamentary control. This

<sup>3</sup> *Records First Assembly*, plenary meetings, p. 292.

interesting prophecy, made on December 6, 1920, was as follows:

. . . as time goes on, the probable evolution of the League must lead more and more to the recognition of the fact that the Council is the chief executive body of the League. That is, in fact, the case, obviously. *It sits all the year round and carries out a great many executive acts during that time.* If that is so, it is quite plain that, as the League goes on, it will become more and more the case that the Council will be treated as the executive body which will be responsible, not as to its decisions, but, at any rate, so far as criticism is concerned, to the whole body of the Assembly. . . .<sup>4</sup>

The thesis of an impermanent Assembly, compelled to let all unfinished business die with its adjournment, was vigorously attacked during the very first session of that body. Indeed, the Swiss delegation proposed a formal resolution through its representative on the First Committee, M. Usteri, which would definitively have made the Assembly more permanent in character than the Council, as the wording of its opening paragraph shows:

The mandates of the officers of the Assembly and of committees whose mandates have not been exhausted during the course of a session of the Assembly, shall continue effective after the session is closed and until the opening of the following session.<sup>5</sup>

Against this proposal both Mr. Balfour, the British representative and chairman of the committee, and M. Viviani, the French representative thereon, rose in arms. The former pointed out:

The League of Nations acts through three organs: the Council which is permanent, the Assembly which is a temporary body, and the committees nominated by the Assembly. According to the Swiss proposal these committees would continue to sit in the interval between sessions of the Assembly. This

<sup>4</sup> The same, p. 286. (Writer's italics.)

<sup>5</sup> The same, First Committee, p. 99.

suggestion constitutes so complete a change in the machinery of the League that it must be most seriously examined.

M. Viviani then carried definition of the Assembly further by characterizing it as a recurrent ambassadorial conference. This statement, made in 1920, of what the Assembly should not do, is an amusingly accurate description of what the Assembly actually did when it took control in the Sino-Japanese dispute in 1932.

What we are doing now is to democratize the ambassadorial system. All the representatives at the Assembly come with certain powers, but they ought not to establish permanent commissions which might have supremacy over the Council.<sup>6</sup>

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The Swiss resolution for permanent Assembly committees, though it pointed the way for later development of the Assembly, was far too sweeping in implication to have a chance of adoption at the first session of that body. On the other hand, this same First Assembly implicitly disowned M. Viviani's intimation that the more democratic League organ has no constitutional right to establish a supremacy over the Council. It did so, curiously enough, as a result of the labors of a sub-committee over which M. Viviani himself presided, the group having in charge the preparation of the Assembly's Rules of Procedure. In presenting the draft rules prepared by this sub-committee to the eleventh plenary meeting of the first session of the Assembly, the *rapporteur* (Signor Maggiorino Ferraris, Italy) laid down certain constitutional definitions of the utmost importance.

<sup>6</sup> The same, pp. 12 and 13. According to the British custom, summarized *Minutes* in the official English text of League documents are always put in the past tense. Where this might lead to confusion, the present tense, as used by the speaker, has been substituted. In cases where the English *Minutes* of remarks made in French are far from felicitous in wording, a more accurate translation from the French *Minutes* is given.

Beyond drawing up Rules of Procedure "of an almost definitive character," Signor Ferraris stated:

Another object which we have endeavoured to obtain is the immediate definition of the respective positions and powers of the members of the League, of the delegates who represent them, of the Council of the League, and of the Secretariat-General. Our guiding principle throughout has been, that the members of the League are the origin and source of the whole organization; that the Assembly is the sovereign but intermittent power of the League; that the Council is the permanent power; that the Secretariat-General is its permanent executive organ.<sup>7</sup>

As Signor Ferraris then proceeded to point out, the Rules of Procedure, which from that time to this have been very little altered, though requiring only a majority vote of the Assembly for revision, are grounded on the assumptions set forth above:

Hence, from these data, it is a majority of the members of the League which can at any time summon a session of the Assembly, settle the place of its meeting, propose the questions to be placed on its agenda, and name their representatives and their substitutes in the Assembly [Rules 1 and 5]. But, once the members of the League have exercised this power, the Assembly, according to our draft scheme, enters into the full functions of sovereignty [*entre en pleines fonctions de souveraineté*]. . . .<sup>7</sup>

During the debate which preceded the adoption of the Rules of Procedure one speaker objected that the report of Signor Ferraris would tend to define the relative competence of the Council and the Assembly, a subject with which this sub-committee had not been charged.<sup>8</sup> It may be argued, however, that the Assembly's unanimous adoption of its Rules of Procedure, on November 30, 1920, involved approval of the principles upon which, as Signor Ferraris emphasized, these rules were based. The Assembly, under Article 5(2) of the Covenant, having

<sup>7</sup> *Records First Assembly*, plenary meetings, p. 215.

<sup>8</sup> Mr. H. W. Rowell (Canada).

the authority to regulate its own procedure and having adopted, and thereafter operated under, Rules of Procedure based on the assumption that the Assembly is the sovereign power of the League, this definition of the place of the organ in the whole constitutional structure would now seem beyond attack. In any event, as the subsequent history of the Assembly shows, its course since the first session has been steadily towards confirmation of the sovereignty asserted in 1920. Before considering later developments, however, it is advisable to give some consideration to the Rules of Procedure themselves.

#### CONSTITUTIONAL IMPORTANCE OF RULES OF PROCEDURE

With the exception of additional provisions regulating Assembly decisions involving expenditure (paragraph two of Rule 14), and providing for the election of non-permanent members of the Council, (Rule 22a), the Rules of Procedure have scarcely had alteration during the years following their adoption by the first session of the Assembly.<sup>9</sup> Most of the changes, which under Rule 28 can be made by majority vote, after a committee has reported on the proposed alteration, are of an insignificant character, such as the decision of the eleventh session of the Assembly, in 1930, to alter the date of commencement of the annual session from the first to the second Monday in September, except when that second Monday falls later than September 10. The validity shown by the original Rules of Procedure is due partly to their non-controversial character, most of them being concerned with details of organization, and partly to the very able draftsmanship exercised in 1920 by Signor Ferraris, an authority on the comparative procedure of representative bodies. But to say that the Rules of Pro-

<sup>9</sup> The latest edition of the Rules of Procedure of the Assembly is found in League Document C. 220. M. 92. 1931. V.

cedure have aroused little controversy is not to say that they have proved constitutionally unimportant.

It is as a result of the first of these rules, for instance, that the Assembly holds annual sessions, this decision having been characterized by one well-informed commentator a decade later as "almost certainly the most important decision taken in League development and probably in general international development since the war."<sup>10</sup> Be that as it may, the action whereby the First Assembly interpreted the "stated intervals" of Article 3 of the Covenant in terms of annual sessions has not merely given at least a semi-parliamentary definition to that body, but has also enabled it to assume authority which could never have been acquired by the quadrennial Assembly which was at first suggested. The significance of the provision that "The Assembly shall meet in general session every year, at the Seat of the League of Nations" has been well summarized by Dr. Benjamin Gerig as follows:

In the first place, it enhanced the position, the power and the prestige of the smaller States in the conduct of international affairs. Secondly, it insured the supremacy of the Assembly over any other organ of the League, in part because it made possible the Assembly's control over the League budget. Thirdly, it made the regular dispatch of a volume of world business the chief feature, instead of the occasional world conference called for emergency measures or spectacular events. Finally, it has tended to give the Assembly more of a legislative character by enabling it to delineate the broad lines of policy which from year to year guide the work of the League through its special organs.<sup>11</sup>

Most significant has been the continuity given to the Assembly by the fact of annual sessions. In itself this

<sup>10</sup> Arthur Sweetser, "The First Ten Years of the League of Nations," *Carnegie Endowment for International Peace International Conciliation Pamphlet No. 256*, p. 17.

<sup>11</sup> *The Assembly and the League of Nations: Its Organization, Character and Competence*, Vol. I, No. 6 (September 1930) in a series of studies published by the Geneva Research Center.



continuity has done much to eliminate the original conception of the organ as a "temporary body." And continuity of the Assembly has also enabled League policy, as determined in the open forum of all the member States, to proceed from step to step in conformity with the actual state of national and international public opinion. Thus, there was direct evolutionary development from the draft treaty of mutual assistance, considered by the Fourth Assembly; through the abortive Geneva Protocol, which came before the Fifth Assembly; thence to the Sixth Assembly's resolution in favor of regional security agreements, which led to the Locarno treaties; and so on down to the "General Act" adopted by the Ninth Assembly, the "Convention for Financial Assistance to States Victims of Aggression," approved by the Eleventh Assembly, and the "Convention to Improve the Means of Preventing War," approved by the Twelfth Assembly.<sup>12</sup> The continuous and co-ordinated effort of the League in behalf of reduction of armaments, as in all other fields of organized international co-operation, would have been much more difficult, if not impossible, were it not for the annual sessions of the Assembly. The scheduled recurrence of its meetings enables that body to give stimulus and direction to an integrated and unending program of development.

The Rules of Procedure are also of constitutional importance in determining the vital issue of budgetary control, a field in which the Assembly has steadily extended its prerogative to the present culmination of complete authority. This extension of power is the more significant because, under the Covenant, the fiscal command might have gone to either Council or Assembly. Beyond a reference as to the method for apportionment of Secretariat expenses, which later was replaced by the Assembly to give the present wording of Article 6(5), there are

<sup>12</sup> Compare League of Nations, *Ten Years of World Co-operation*, Chap. II.

no provisions in the Covenant governing financial administration. The wording of the amendment which came into force on August 13, 1924 is itself indicative of the extension of Assembly authority in the fiscal field:

#### ARTICLE 6(5)

##### ORIGINAL COVENANT

The expenses of the Secretariat shall be borne by the members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

##### AS AMENDED

The expenses of the League shall be borne by the members of the League in the proportion decided by the Assembly.

#### THE START TOWARDS FINANCIAL SUPREMACY

Historically, it was the Council which first exercised fiscal authority. For eight months prior to the legal establishment of the League—on January 10, 1920, when the Treaty of Versailles came into force—the nucleus of the Secretariat had been at work in London, its preliminary expenditure being met by advances from the British and French governments. Not until the fifth session of the Council, on May 18, 1920, was the budget formally adopted for the first financial period, which was retroactively established as from May 5, 1919 to March 31, 1920. At the same time the Secretariat estimates of expenditure during the three months of April, May, and June, 1920 were approved. On August 2, 1920, during the eighth Council session, the estimates for the second financial period, covering the half-year from July 1 to December 31 were adopted and for the three months April, May, and June, the expenditure was, again retroactively, merged in the first financial period. Aside from this minimum of very casual bookkeeping the Council, at these two sessions, decided on the calendar year as the

fiscal year of the League; made a temporary arrangement for audit of accounts by officials of the British Treasury; and adopted the gold franc<sup>13</sup> as the monetary unit for League financing. To the Assembly, however, was left the task of establishing systematic methods of financial administration.

In the Rules of Procedure as adopted by the first session of the Assembly it was determined that this body should have at least joint authority with the Council over League finances. The decision of the Assembly was: "The agenda of a general session shall include . . . the budget for the next fiscal period, and the report on the accounts of the last fiscal period."<sup>14</sup> Coupled with the decision that there should be a general session of the Assembly every September, this meant that the last word regarding the League's budget, operating for the calendar year, would be had by the Assembly session of the preceding autumn. But the establishment of Assembly authority with respect to finance was not stopped at that preliminary step.

Among the six standing committees appointed by the First Assembly to facilitate the conduct of business, the fourth was then, and has continued to be, entrusted with questions relating to League finances, as well as to the internal organization of the Secretariat, the International Labor Office, and the Registry of the Permanent Court of International Justice. The work of the Fourth Committee of the Assembly, together with that of the First Committee (which deals with legal and constitutional questions), has always been of predominant importance in the constitutional evolution of the League.

The Fourth Committee of the First Assembly, after formal and retroactive adoption of the first and second League budgets (thereby intimating that the previous

<sup>13</sup> Equivalent to 19.3 cents at par of exchange.

<sup>14</sup> Rule 4(2f) in the original Rules of Procedure. Now Rule 4(2e).

adoption of these budgets by the Council needed Assembly approval in order to be complete), prepared a recommendation of thirteen articles which in due time formed the basis of the present "Regulations for the Financial Administration of the League of Nations."<sup>15</sup> These recommendations did not attempt to deprive the Council of its previously asserted right to receive a draft budget from the Secretary-General, for its approval before submission to the Assembly.<sup>16</sup> But they none the less asserted categorically (Article 12) that "the Assembly shall finally pass the accounts for expenditure and income." Moreover, the recommendations of the Fourth Committee considerably broadened the decision which the Council had made, in May 1920, regarding the important duty of audit. The Council had then ruled (*italics inserted*) that:

At the close of every financial period the Council *will appoint two of its members* to examine the accounts and to draw up a report thereon, preliminary to their being presented for approval.

Seven months later the Assembly revised this procedure by determining that:

At the beginning of each year, the Council shall engage the services of the auditors of a government chosen by it *from the members of the League*.

Since the establishment of the Supervisory Commission the auditor and his deputy, though still formally appointed by the Council for a term of five years, are in fact proposed by, and entirely responsible to, that commission, the members of which are now elected by the

<sup>15</sup> The text of these regulations is found in League Document C. 614. M. 191. 1928. X.

<sup>16</sup> The Council established its original position with regard to the League budget in its Rules of Procedure, adopted at Rome, May 17, 1920 (League Document 20/31/39A.). Compare above, pp. 398-400.

Assembly, which must also give final approval to the audited accounts.<sup>17</sup>

The extent to which the recommendations of the Fourth Committee of the First Assembly established comprehensive Assembly control of League finance was summarized by Sir George E. Foster, former finance minister of Canada, *rapporteur* of the committee, in presenting its report to the whole Assembly, where it was adopted, with certain minor changes, on December 17, 1920. In the course of his exposition Sir George Foster said:

I will, very briefly, lay before the Assembly what has been done in order to insure adequate and sufficient control. In the first place, all expenditures are to be authorized by the Assembly. The Assembly in this case holds the purse-strings as the representatives of the governments whose delegates the Assembly are. No expenditures, therefore, can be undertaken except on the authorized vote of the Assembly or according to the instructions given by the Assembly. Once the estimates are voted and the instructions given by the Assembly, expenditure then becomes possible in the different organizations . . . It is under these precise indications as approved by the Assembly that all expenditures have to be made, whether they be by order of the Council or by order of the Secretary-General.<sup>18</sup>

It should be noted, also, that in adopting the report of its Fourth Committee the First Assembly established at least general control over the budget of the International Labor Organization. This financial control, obviously, has been an important factor in determining the essentially subordinate position of the Labor Organization *vis-à-vis* the League, a subordination which is largely concealed by the autonomous character of the labor institution and the fact that its organic act is a separate section of the Treaty of Versailles (Part XIII). On this subject the report of the Fourth Committee, as adopted by the First Assembly, said:

<sup>17</sup> Compare Financial Regulations, Articles 4 and 38.

<sup>18</sup> *Records First Assembly*, plenary meetings, p. 677.

According to Article 399 of the Treaty of Versailles and similar stipulations in the other treaties of peace, the expenses of the Labor Organization which are not borne by the States members of the League are to be paid from the general funds of the League. It follows that the Assembly, which passes the budget of the League, is thereby called upon to decide the total amount to be allocated to the Labor Organization.<sup>19</sup>

The field in which the Assembly has most effectively established its authority as the sovereign power of the League is undoubtedly found in its gradual extension of control over the Supervisory Commission, which in the League's organization fills the role occupied by an independent committee on the budget in many national governments.<sup>20</sup> Having first asked the Council to appoint such a commission the Assembly has since, by gradual stages, completely divorced the smaller body from any control in this matter, substituting the method of *election* by the Assembly for the method of *appointment* by the Council. This development, which will be examined later, must be taken not merely as symptomatic of the greater interest which the Assembly has always shown in democratizing League procedure, but also as a striking indication of the ability of the more representative body to extend its control in the sphere of concurrent powers which the Covenant gives jointly to Council and Assembly.

#### ESTABLISHMENT OF THE SUPERVISORY COMMISSION

Aside from its constitutional significance the story of the Supervisory Commission is important for the light which it throws on the development of governmental functions in League procedure. Here, as in so much that

<sup>19</sup> The same, p. 700.

<sup>20</sup> The part played by the Supervisory Commission is really rather more than that of an independent committee on the budget. It has also a direct supervision power, comparing in its revisionary aspect with the French *Commission de Contrôle des Dépenses Engagées*.

is vital in League history, the roots go back to the First Assembly.

By a recommendation of the Fourth Committee of that session, adopted at the same time as the financial recommendation of thirteen articles referred to above, the Assembly requested the Council to appoint a small committee "to consider all factors connected with the organization, method of work, efficiency, numbers, salaries and allowances of the staff, and with the general expenditure of the whole organization."<sup>21</sup> This was the origin of the committee of five, under the chairmanship of M. Georges Noblemaire, whose examination of the work of the Secretariat has been considered in the chapters on that organ.<sup>22</sup> The report of this committee was submitted to the Secretary-General on May 7, 1921, and by him transmitted to the second session of the Assembly when it convened in September of that year.

Section VIII of that report, under the heading "Financial Control," is all that concerns us here. In this section the Noblemaire Committee drew attention to the fact that in normal governmental financial procedure the principle is well established that "proposals for expenditure shall, before submission to the national parliament, first be submitted to a careful scrutiny by a small body capable of giving expert opinion, and entirely independent of the body which framed the policy involving the expenditure in question." Accordingly, in the words of the Noblemaire Committee:

We therefore recommend the creation of a commission of control, consisting of four (or perhaps six) members, to be appointed by the Council from different States members, and it seems desirable that an adequate number of the members of the commission should be chosen from members of the League other than those represented on the Council. The commission should meet in Geneva once a year for the purpose of investi-

<sup>21</sup> For full text of this resolution see *Official Journal*, January 1921, p. 27.

<sup>22</sup> See pp. 302 and 323.

gating in detail the budget of the League of Nations for the ensuing financial year. The date of the meeting should be so fixed as to give sufficient time for its report to be circulated to the States members of the League as a commentary on the actual budget proposals. The members of the League would thus be able to study the budget proposals in the light of the expert opinion of the commission which had studied them on the spot, and would be in a position to instruct their representatives accordingly at the next meeting of the Assembly.

In addition, it was recommended by the Noblesse Committee that the proposed commission of control should at its annual meeting carefully scrutinize the audited accounts for the preceding fiscal period and assure itself that "the intentions of the Assembly have been properly interpreted" in the expenditure of all monies voted by that organ. A further recommendation, tending strictly to limit the financial independence of both the Council and the Secretariat, was the following:

It is particularly necessary that this commission [of control] should examine all cases in which a decision of the Financial Director [now Treasurer] may have been overruled by written directions from the Secretary-General, whether or not acting on instructions from the Council. To attain this end, it will be necessary that the commission of control should have power to call upon officers of the Secretariat to appear before them and explain the circumstances attending any exceptional or extraordinary expenditure.

During the second session of the Assembly its Fourth Committee carefully scrutinized the *Noblesse Report* and adopted its provisions for financial control practically *in toto*. The Assembly thereupon recommended that the Council should appoint a commission of control selecting its membership "in such a way as to include members of the League which are not represented on the Council." At the same time the finances of the International Labor Organization were definitively brought under League control by adoption of the "recommendation"—drafted



in language stronger than that word would indicate—that:

The draft budget of the International Labor Organization shall be laid before the Committee of Control by four members of the Governing Body, two of whom might be selected from the delegates of governments, one from employers' delegates and one from the workers' delegates. The Governing Body shall decide whether the Director or Deputy Director of the International Labor Office shall be added to the delegation.

A representative of the Governing Body shall be authorized to attend, in an advisory capacity, any meetings of the Assembly that deal with the budget. It is, of course, understood that the representative in question cannot rise to speak except on the invitation of the President.<sup>23</sup>

The Supervisory Commission, as the *Commission de Contrôle* soon came to be known in English, was duly appointed by the Council and held its first meeting in May 1922. Its original membership was fixed at five, of whom at least one member should be a financial expert of recognized standing, and although the appointment of deputy members was later arranged, the board of five has throughout been found a satisfactory number. As first appointed the Supervisory Commission had but one representative (M. Noblemaire) from a State which was then a Council member, the other four being nationals of Chile, Czechoslovakia, Netherlands, and New Zealand. Throughout its history, indeed, the practise has been for non-members of the Council to possess a majority of the membership of this important commission. The established precedent in its composition is that it should be composed of two financial experts of recognized standing, one of these from a small Power; of two representatives from States without permanent Council seats; and of one representative from a permanent member of the Council. It may also be noted that the meetings of the Supervisory Commission have had to be much more fre-

<sup>23</sup> *Official Journal*, S. S. No. 6, October 1921, p. 29.

quent than the annual gatherings anticipated in the *Noblemaire Report*. The session in May, for the examination of the next year's budgetary estimates and the previous year's audited accounts, has throughout been of chief importance. But an annual session during the Assembly period is now also obligatory.<sup>24</sup>

Among the duties entrusted to the Supervisory Commission at the outset was the preparation of definitive "Regulations for the Financial Administration of the League of Nations," an exhaustive document of fifty-six articles (counting the amendments made since its original adoption) which is of very considerable constitutional significance. These regulations were adopted by the third session of the Assembly, on September 29, 1922, a year after the Assembly, at its second session, had recommended that the Council appoint a "committee of control" and four months after this commission, as appointed by the Council, had held its first session. Yet the first paragraph of the first article of the Financial Regulations as adopted by the Third Assembly state that:

There *shall be* a supervisory commission to perform the duties assigned to it by these regulations, and to deal with any other special matters referred to it by the Assembly or the Council.<sup>25</sup>

And the last Article (52) in these regulations enforces this use of the future tense by declaring:

The present regulations *shall come into force* on January 1, 1923.<sup>25</sup>

It would therefore seem that the Supervisory Commission, though appointed by the Council on recommendation of the Assembly, apparently possessed no constitutional reality until its existence was confirmed by the subsequent session of the Assembly. The precedent, then

<sup>24</sup> Financial Regulations, Article 16b.

<sup>25</sup> Writer's italics.

established, still rules. While the Assembly has in numerous cases delegated powers of appointment to the Council, it has not recognized that there is in the latter organ any inherent right to establish League committees or commissions on its own authority. On the contrary, the power to add new organs to the complicated structure of the League, and to define the duties which these new organs may legally undertake, is one for the decision of the Assembly and the Assembly alone. The Council may appoint, but the Assembly must create.

#### CONSTITUTIONAL IMPORT OF FINANCIAL REGULATIONS

There are other articles with an obvious constitutional significance included in the "Regulations for the Financial Administration of the League of Nations." The more important may be singled out for quotation and brief commentary.

*Article 6:* All organizations of the League, autonomous and non-autonomous, and all temporary organizations hereafter created under the auspices of the League, whether their expenditure is or is not, in whole or in part, met out of the votes of the Assembly, shall comply with these regulations and with every decision of the Assembly governing financial and budgetary administration.

Herewith the Assembly asserts a measure of administrative authority not merely over integral League organs, but also over every organization legally connected with the League. It thereby establishes for itself that power to influence policy which is always latent in the body possessing control of finance.

*Article 16a* [paragraph 1]: Proposals involving an increase in the budget as originally communicated to the members of the League must be placed in the hands of the Secretary-General at least one month before the date fixed for the opening of the Assembly's session. The Secretary-General, or the competent official of the autonomous organization concerned,

shall draw up as accurate an estimate as possible of the amount of the necessary increase. If a proposal received later than one month before the opening of the session is found to involve an increase in the budget, it shall be adjourned until the next session of the Assembly, unless the Assembly, by a two-thirds majority, decides otherwise.

The provision that a two-thirds majority of the Assembly is needed to pass the proposal here outlined seems at variance with any literal interpretation of the League's Covenant. That organic law states (in the first paragraph of Article 5) that unanimity in the Assembly is necessary "except where otherwise expressly provided in this Covenant." Nowhere in the Covenant is any provision made for procedure concerning adjournment of a budget item from one session of an Assembly to the next. On the other hand, Article 5 (2) of the Covenant states that "All matters of procedure at meetings of the Assembly . . . may be decided by a majority," which of course means a simple and not a two-thirds majority.<sup>26</sup> Whether or not the situation visualized in this article of the Financial Regulations is to be regarded as a "matter of procedure" it would appear that the Assembly in adopting it has laid claim to a liberal right of interpreting the Covenant, a right of interpretation which might be called scarcely different from that of amendment, although for the latter Article 26 of the Covenant lays down specific procedure.

*Article 16b:* A session of the Supervisory Commission shall be held each year during the session of the Assembly.

<sup>26</sup> This stipulation for a two-thirds majority in the Assembly is not visualized by Schücking and Wehberg among the *Ausnahmen von dem Grundsätze der Einstimmigkeit* listed by them; see *Die Satzung des Völkerbundes* (2d ed.), p. 336. A more recent juridical study of the Covenant (Jean Ray, *Commentaire du Pacte de la Société des Nations*, published in 1930) also fails to consider the relationship between Article 16a of the Financial Regulations and Article 5 of the Covenant. M. Ray observes however that: "C'est un fait incontestable, et très important, que par plusieurs voies, les organes de la Société ont interprété le principe de l'article 5 de manière à en atténuer la rigueur." (P. 227.)

In other words, the Supervisory Commission, whatever its independence during eleven months of the year, is to feel its responsibility to the Assembly, through the Finance (Fourth) Committee of the latter, during the annual session of the dominant League organ.

*Article 16d:* A decision of the Finance Committee shall be reconsidered if a request to that effect is formulated by one-quarter of the members of the Finance Committee or by the competent official of the organisation affected or by a vote of another committee of the Assembly affected thereby.

Such reconsideration shall not take place until after an interval of at least twenty-four hours from the time when the request was made or was communicated to the Finance Committee.

The Finance Committee of the Assembly has always shown a strong loyalty to democratic principles. The above provision partakes somewhat of the theory underlying the device of the referendum. It is also akin to the "double discussion rule" now in force for draft conventions under consideration by the International Labor Conference.

*Article 16e:* Subject to the above provisions, the budget and supplementary budget shall be referred to the Finance Committee, which shall place them before the Assembly in the form approved by it, preferably in a single document.

In conjunction with Article 51 of the Finance Regulations, discussed below, this provision assures the existence of the Finance Committee of the Assembly for as long a period as the League possesses a budget—in other words, permanently. As will be shown later, none of the other six main committees of the Assembly has legally acquired this exceptional position. A permanent existence for a committee of the Assembly of course implies something more than an intermittent character for the Assembly itself.

*Article 23a:* (1) Gifts which may directly or indirectly involve an immediate or ultimate financial liability for the

members of the League may only be accepted after authorisation by the Assembly.

(2) Gifts not involving any financial liability for the members of the League may be accepted by the Council or, where offered to an autonomous organisation, by the competent authority of the organisation, if the Council or the authority is satisfied that acceptance will not undesirably affect the general character of the League or the special organisation in question and is in accordance with the general policy which should be pursued.

From this it is seen that the Assembly alone has competence to accept gifts involving expenditure by the League. In the case of gifts not involving League expenditure it is the Assembly which herewith lays down the conditions on which they may be accepted by the Council or an autonomous organization of the League.

Between these, perhaps significantly, no distinction is made. It is not impossible that the eventual evolution of the League might in practise deprive the Council of the concurrent authority with the Assembly assured under the Covenant, leaving the Council a body with specific minimum duties not dissimilar in constitutional function from those performed for the League by the World Court or International Labor Organization. In this connection attention should be directed to the resolution adopted on March 11, 1932, at the special session of the Assembly convoked to assume control in the Sino-Japanese dispute. By this resolution the twelve members of the Council neutral in the dispute were constituted as the greater part of an Assembly committee of nineteen, "exercising its functions on behalf of and under the supervision of the Assembly."<sup>27</sup>

*Article 38:* (1) The Assembly shall finally pass the expenditure and income accounts. It may disallow any item which it may consider improper and may direct the corresponding amendment of the accounts. The accounts, with the modi-

<sup>27</sup> See pp. 559-60 below.

fications (if any) made by the Assembly, shall be adopted by the Assembly.

(2) If the Assembly disallows any item in the accounts, it shall, at the same time, decide what steps shall be taken to deal with the matter.

Not only the initiation but also the final approval of all fiscal operations of the League rests with the Assembly.

*Article 51:* These regulations shall not be amended except by the Assembly acting upon the advice of its Finance Committee; but, where it is proved to the Commission that some alteration or addition is urgently required, the Commission is authorised to approve and to put into temporary operation such alteration or addition, but shall report thereon to the Council and the Assembly as soon as possible for final decision by the latter.

Since the Supervisory Commission became a permanent committee of the Assembly, the Council has been left without any power, even in an emergency, to amend the Financial Regulations. This article also, in conjunction with Article 16e quoted above, tacitly perpetuates the Finance Committee as a permanent committee of the Assembly. To deny this permanence is tantamount to saying that the Finance Regulations can never be amended by the League, which would be to claim for them inviolability above that of the Covenant itself.

#### WITHDRAWAL OF POWERS DELEGATED TO THE COUNCIL

It has been stated in this chapter that while "the Council may appoint, the Assembly must create." Whenever it is so minded, the Assembly, it would seem, can deprive the Council of even those powers of appointment which it has delegated to the latter body in the first instance. No phase of the development of the Assembly's sovereignty has been more striking than the steps whereby, during the ninth, tenth, and eleventh sessions, it ousted

the Council from all semblance of control over the Supervisory Commission, making the latter body entirely subordinate to the Assembly itself.

When the ninth session of the Assembly convened, in September 1928, scarcely anybody anticipated that it would see a constitutional change of the first magnitude effected. Public attention, as always, was focused on the dramatic incidents of the day, such as the signing of the Pact of Paris, which had taken place in that city a fortnight previous to the opening meeting of this Assembly session. There was not apparent at the time, either in the Secretariat, or among the Assembly delegates of the Great Powers, any advance knowledge of what was to prove the most significant constitutional development that the League had seen since the Assembly decided that it would hold annual sessions. In other words, there was demonstrated the impossibility of countering beforehand—as the framers of the Covenant had wished to do—the Assembly's power to establish without warning innovations of great political consequence.

The budget for the ensuing year, as approved by the Supervisory Commission, had been discussed in the Fourth (Finance) Committee of the Ninth Assembly when Mr. Carl Joachim Hambro, Norwegian representative on that committee, proposed an alteration of a single word in paragraph two of Article 1 of the Financial Regulations. These "shall not be amended except by the Assembly acting upon the advice of its Finance Committee."<sup>28</sup> The single word to be struck out by this proposed amendment, however, was the word "Council," as the agency empowered to appoint the Supervisory Commission, and the one to be substituted was the word "Assembly." The change was trivial enough from the typographic standpoint, but its constitutional effect was such as materially to affect the balance of power between the

<sup>28</sup> Financial Regulations, Article 51.



two organs. With the word "Council" eliminated and the word "Assembly" replacing it as italicized below, the revised paragraph in the Financial Regulations read:

The [Supervisory] Commission shall be composed of five members, of whom one at least shall be a financial expert. The members shall be appointed by the *Assembly*, which, in selecting members, shall include among them persons belonging to countries members of the League which are not represented on the Council. The *Assembly* shall also appoint two substitutes to replace, if need be, members unable to attend a meeting.

After brief debate in the Finance Committee, during which it was emphasized that the proposed change involved no reflection whatsoever on the membership of the Supervisory Commission as then composed, but was designed to harmonize the constitutional situation with the "universally recognized principle" that a parliamentary body providing credits should control their expenditure, the Hambro amendment was carried by a vote of thirteen to six. Opposition came mainly from representatives of States with permanent membership on the Council.<sup>29</sup> Thus approved in committee the provision for the election of the Supervisory Commission by the Assembly was, on September 26, 1928, adopted by that body in plenary session—a striking instance of the fact that the unanimity rule need not prevent changes of vital constitutional importance. The resolution as passed included a proposal of the Fourth Committee:

That this amendment should come into force as from January 1, 1929, in order to give the Council an opportunity of submitting proposals to the Assembly at its next ordinary session as to the best procedure for the election of members [of the Supervisory Commission], and considering the possibility of a small nominating committee being set up by the Assembly.<sup>30</sup>

<sup>29</sup> *Records Ninth Assembly*, Fourth Committee, pp. 89–90.

<sup>30</sup> League Document A. 78. 1928. X.

## THE ASSEMBLY CURBS UNWRITTEN SECRETARIAT POWERS

The political magnitude of this resolution will not be thoroughly understood without appreciation of the underlying conditions which it sought to alter. The members of the Supervisory Commission, while nominally appointed by the Council, had in fact been selected from the outset by the higher officials of the Secretariat, an example of the very large intangible powers of that permanent organ which have already been examined. Against the tacit alliance between the representatives of the permanent members of the Council and the executive officers of the Secretariat—an alliance natural because of the formers' need of guidance in all matters of League detail, but galling to outsiders because both groups represented the same "inner circle" of Great Powers—various energetic parliamentarians of the smaller nations had been in revolt for some years before 1928. In Mr. Hambro, the president of the Norwegian Storting, these reformists found an energetic and competent leader.

Politics are played vigorously around the portals of the League of Nations and various impediments may appear in the path of the radical reformer. In the Eighth (1927) Assembly, at Secretariat instance, Mr. Hambro was named chairman of the Fifth (Opium and Social Questions) Committee. Instead of participating in the constitutionally important debates of the Fourth Committee, he consequently spent his time in presiding over discussion on such subjects as the protection of women and children in the Near East. Prior to the Ninth Assembly, as he told the present writer, the effort to shelve the Norwegian Progressive took the form of offering him the Assembly presidency, which "I refused because I wanted to start something in the Fourth Committee." Mr. Hambro's own summation of the conditions against which his reform was directed is worthy of quotation:

It is one of the constitutional weaknesses of the League that there are no permanent committees elected by the Assembly. At every session the Assembly is regarded not only as a new body but as a new-born institution. The officers of the last Assembly have disappeared; the opening session is presided over by the President of the Council, who need not even be a delegate to the Assembly. Only the Rules of Procedure remain, without being questioned and without being approved, even without being studied. There are unlimited facilities for procrastination, for delaying any matter that may prove difficult or displeasing, and for creating involved systems of "red tape." Every delegate is a delegate appointed for one session of the Assembly only; with political crises and the fall of cabinets the delegations constantly change. A question raised one year and deferred to the next ordinary Assembly may be forgotten. The importunate delegate may have disappeared; he may be put on some other commission; he may be raised to a chair where he has no opportunity of questioning, only of answering.<sup>81</sup>

It was not merely the political obstacles always, and perhaps fortunately, present where constitutional innovation is concerned, which made the success of the Hambro resolution appear dubious or undesirable contemporaneously. In commenting upon this resolution in a lecture at his Geneva School of International Studies, Professor Alfred Zimmermann, a very close and observant student of the League, observed on the day after its passage in committee that this is "a matter which is easier to approve in theory than in practise." "The Supervisory Commission," he continued (according to notes taken by the author at the time), "is in reality chosen by the Secretariat. How could the Assembly, lacking any permanent organization, be relied on to make these appointments?"

This question, which was asked by many at the time, was answered in due course—by the creation of that nucleus of a permanent Assembly organization which

<sup>81</sup> From an article in the *London Times* of Sept. 4, 1929.

certain of the delegates of the smaller nations had urged ever since the first session of the Assembly.

#### ASSERTION OF ACQUIRED PREROGATIVES

The Council, asked by the resolution of September 26, 1928 to propose means whereby Assembly election of the Supervisory Commission could be carried out, adopted a report on the subject on December 11, 1928, at its fifty-third session. The essential part of this report, submitted by the Persian representative as a result of suggestions from the Secretariat, shows clearly the extent of the innovation which was being made:

There seems to be only one precedent for the appointment of a standing committee by the Assembly. That body, at its eighth ordinary session, decided to set up a committee of five members to choose a plan for the new League buildings, and proposals as regards the membership of this committee were made by the General Committee of the Assembly, which submitted a list of five names. This list was adopted by the Assembly.

This procedure seems to me to be simple and practical, and I would suggest, if the Council agrees, that we should propose to the Assembly to follow it in regard to the nomination of the Supervisory Commission. . . .<sup>32</sup>

The precedent cited in this authorization, whereby the Supervisory Commission became a standing committee of the Assembly, was of a nature calculated to emphasize the unprecedented character of the new step. For the terms of reference of the building committee nominated by the General (Steering) Committee of the Eighth Assembly had merely empowered it to study the various architectural plans awarded prizes in the competition for the permanent League buildings "and to choose, with any changes that may be necessary, a plan which in its opinion complies most nearly with the practical and

<sup>32</sup> League Document A. 7. 1929. X.

æsthetic requirements.”<sup>83</sup> In the conversion of the Supervisory Commission into an Assembly committee, however, no similar limitations of function or duration were involved. As distinct from this building committee the Supervisory Commission is not merely a permanent standing committee, but also one which through its duty of supervising League financing may exercise very considerable power over every part of the organization.

During the tenth session of the Assembly, in September 1929, its Finance (Fourth) Committee naturally adopted the Council report quoted above. But it did not stop its activities in behalf of constitutional reform on the ground already won. Under Council control the original members of the Supervisory Commission had been continuously reappointed. In diametric opposition to this policy it was suggested in the Fourth Committee that at the expiration of their term they should be declared ineligible for reappointment.

While the question of re-eligibility was postponed, a resolution introduced by Mr. Hambro, which went far towards breaking up the crystallized position acquired by the Supervisory Commission under Council control, was adopted. This provided for amendment of the Financial Regulations to establish a partial annual renewal of the five members of the Supervisory Commission, the arrangement being that two of the members should retire at the end of 1930, two at the end of 1931, and one at the end of 1932, the order of retirement being determined in every case by lot. Adoption of this system of election in rotation made the issue of re-eligibility less important. At each annual election one or two of the sitting members could be replaced without seriously affecting the continuity of the Supervisory Commission as a board. On the other hand, the Assembly could extend the mandate of one or two sitting members each

<sup>83</sup> *Official Journal*, S. S. No. 53, October 1927, p. 27.

year without committing itself to re-election of the group as a whole.

Contemporaneously with this further assertion, if not extension, of constitutional prerogative, the Finance Committee of the Tenth Assembly defeated, by a vote of twenty-five to eight, an Austrian proposal that the membership of the Supervisory Commission should be increased from five to seven. The arguments against this resolution did not question the right of the Assembly to increase the size of the Commission if it so desired, but stressed instead the technical character of this board of fiscal control and the danger which would be incurred if, as happened with the Council, it were made more representative of League membership and therefore more subject to political influences. In retrospect this decisive negative vote in the Fourth Committee is significant as indicating that side by side with firmness and foresight in extending Assembly powers it possesses self-control in the exercise of its strength.

#### ESTABLISHMENT OF THE FIRST STANDING COMMITTEE

On September 14, 1929, the Tenth Assembly in plenary session adopted the resolution of its Fourth Committee asking future rotation in election of members of the Supervisory Commission and requesting the General Committee of the Assembly to submit, for election by the parent body, "a list including a number of names equal to the number of seats to be filled in the Commission."<sup>34</sup> This number, due to the retirement of the whole Supervisory Commission in 1929, was composed of five full members and two substitute members. In presenting this report of the Fourth Committee to the Assembly its *rapporteur*, Dr. William E. Rappard (Switzerland), duly emphasized the importance of the motion for adoption, telling the assembled delegations that: "You are

<sup>34</sup> *Official Journal*, S. S. No. 74, October 1929, p. 34.

today being asked to sanction the creation of the first permanent committee of the Assembly." From the platform Dr. Rappard then recalled the summary dismissal at the first session of the Assembly of the somewhat similar Swiss proposal for permanent Assembly committees and noted that the trend of development, and the growth of practical co-operation between the Assembly and Council, had been such as to render normal in 1929 a proposal which in 1920 had seemed "revolutionary."<sup>85</sup>

To fulfill the mandate thus given, the Assembly's General Committee, the nature and functions of which will be examined in the following chapter, appointed a sub-committee of three to name the new membership of the Supervisory Commission for formal election by the Assembly as its first permanent committee. As was expected, four of the five men named were retiring members of the Supervisory Commission, the fifth being replaced for reasons which had nothing to do with his previous service. Initiative on the part of the General Committee in making these nominations was thus virtually confined to the naming of two new substitute delegates, who are called to sit only in the absence of the regular members.

The nominations thus approved by the General Committee came before the Assembly for formal election at its morning meeting on September 23, 1929. To most observers the occasion seemed much less important than Dr. Rappard had indicated in his report a few days earlier, for after all the only practical change had been to secure election by the General Committee of the Assembly, composed of fourteen men of whom five are by tradition representatives of the nations with permanent Council seats, in the place of election by the Council itself, also composed of fourteen men, their five leaders being the same as those with seats on the General Committee of the

<sup>85</sup> *Records Tenth Assembly*, plenary meetings, p. 140.

Assembly. But the revisionary process with regard to the Supervisory Commission had not yet been completed, and an inkling of what was to follow the next year was given by Mr. Hambro just before the election took place.

Señor Guerrero (Salvador), the president of this Assembly session, had read from the tribune the names of those nominated by the General Committee and was about to declare them elected on the "silence gives consent" principle, when Mr. Hambro unexpectedly intervened. Asserting that "This is one of the most important elections to take place in the Assembly" the Norwegian delegate rose to demand a regulation ballot.<sup>86</sup> His purpose was to emphasize the importance of the election by attaching to it all due formality and to bring home to the Assembly the fact that within its hands now rested sole power for determining the composition of one of the most vital subsidiary organs of the League. Naturally, the result of the vote by ballot in no way differed from the nominations as made by the General Committee. Lord Meston (India), Count Moltke (Denmark), M. Osusky (Czechoslovakia), M. Parra-Perez (Venezuela), and M. Réveillaud (France), were elected members of the Supervisory Commission, the only change in its previous composition being the substitution of Count Moltke for M. Nederbragt (Netherlands). The two substitute members elected by the Assembly, on nomination of its General Committee, were, however, both replacements, being Professor Botella (Spain) and Prince Varnvaidya (Siam).

#### PROBLEMS ARISING FROM ANNUAL SESSIONS

As though to drive home all the implications of the constitutional change which had been made, an unexpected difficulty regarding the Supervisory Commission

<sup>86</sup> The same.



arose immediately after the adjournment of the tenth session of the Assembly. One of the elected members (M. Osusky) was unable to accept reappointment and one of the substitute members (M. Botella) soon submitted his resignation because of complications in leaving a diplomatic post in Paris for periodic meetings of the commission in Geneva. The incident is illustrative of the obstacles experienced by the League in having to rely for some of its most essential services on the assistance of men who are already burdened in the service of their own governments, and to whom the parsimonious budget at Geneva can offer little in the way of financial compensation.

To the work of the Supervisory Commission itself the resignations would have made little difference if the power of appointment had not been taken away from the Council. That body would simply have filled the vacancy created by M. Osusky at its meeting in January 1930. With the power of appointment vested with the Assembly, however, no vacancy caused by resignation, illness, or death can be filled until the next annual session. In addition to that obvious impediment, which caused a good many to regret the extension of authority made by the Assembly, the absence of a fifth member of the Supervisory Commission threw out of gear the arrangement which had been made for the election of its members in rotation.<sup>37</sup> Furthermore, the resignation of M. Botella revealed that the Assembly had made no provision regarding the term of office of substitute members of the Supervisory Commission.

This juncture of events showed plainly the impossibility of remaining stationary on the level of constitutional evolution then reached. It would have been possible, though highly undignified, for the Assembly,

<sup>37</sup> Compare p. 531 above.

having made a sharp sally at the expense of Council prerogative, to withdraw and confess that an organ meeting only once a year could not efficiently assume responsibility for a permanent League commission. The Assembly could, on the other hand, act on the assumption that the difficulties which had arisen could best be removed by a further extension of its powers leading in the direction of greater permanence of organization. The fact that the latter course was chosen is an index to the line of development which may be expected in future.

Immediately after its appointment the Finance Committee of the Eleventh Assembly proceeded to rectify the situation caused by the vacancy on the Supervisory Commission. It decided to approve an "interpretation" of the Financial Regulations so that only one member of the Supervisory Commission, instead of two as stipulated in the amendment passed the preceding year, should retire at the end of 1930. This assumption of the power to "interpret" a fundamental organic law of the League, even though the interpretation was under the circumstances eminently rational, and even though it was in the first place suggested by the Supervisory Commission, was in itself a constitutional innovation worthy of notice, particularly at a stage of League history when precedents created lightly may so readily be invoked for broader purposes later.<sup>88</sup>

This interpretation of the Financial Regulations having been agreed upon, the Finance Committee took up the question of the eligibility of members of the Supervisory Commission to re-election, on which no decision had been made at the preceding Assembly. Before the opening of the Eleventh Assembly the Swiss government had sent to the Secretariat, for circulation, a suggestion that:

<sup>88</sup> Compare above, p. 530. The report of the Supervisory Commission suggesting "interpretation" of the Financial Regulations is League Document A. 53.

"Retiring members shall be eligible for appointment three years after the expiry of their term of office." This was supported by the argument, typical of the attitude of the smaller members of the League, that:

The present system (of unlimited re-eligibility) is not entirely compatible with the principles of equity which should, wherever possible, be observed by the Assembly. . . . It would be more logical, equitable and more in keeping with a rational conception of administrative principles if all the countries members of the League, as represented by nationals, were called upon in turn to exercise functions so important for the finances of the League.<sup>39</sup>

The Swiss proposal, though indorsed by several delegations, met the immediate opposition of the school which attaches greater importance to the element of continuity than to the representative principle. A decade earlier the democratization group would in all probability have been defeated. In 1930 it secured the adoption of a compromise, without any great concession, whereby Article 1(3) of the Financial Regulations was amended to read:

On retiring from the [Supervisory] Commission on the expiration of their term of office, members shall only be eligible for re-election for a single period of three years. This rule shall not prevent subsequent election of the same persons after the expiration of at least three years from the end of their last term of office.<sup>40</sup>

#### ASSUMPTION OF POWER BY THE FINANCE COMMITTEE

The Fourth Committee of the 1930 Assembly had now interpreted and amended the Financial Regulations in such a way as to emphasize the complete control of the Assembly over the Supervisory Commission, no longer the agent of the Council as which it had been created. But the end was not yet. On September 23, 1930, the

<sup>39</sup> League Document A. 62. 1930. X.

<sup>40</sup> The same.

indefatigable Mr. Hambro suggested a resolution whereby the Fourth Committee itself, instead of the General Committee of the Assembly, should nominate the members of the Supervisory Commission for election by the Assembly. The significance of this very important move was twofold.

In the first place it democratized and gave reality to Assembly control over the Supervisory Commission, since the Fourth Committee is a microcosm of the whole Assembly, with every member State entitled to have a representative thereon. The General Committee of the Assembly, on the other hand, is only in theory a representative body, and is largely dominated by the delegates of the Great Powers. Moreover, having duties which are political rather than constitutional in nature, the General Committee relies largely on the advice of the higher officers of the Secretariat in such matters as the making of appointments. It may be stated categorically, though of course documentary proof of the assertion is not available, that the campaign of the Fourth Committee for an extension of Assembly powers was throughout directed as much against the assertion of unwritten authority on the part of the Secretariat as against the existence of authorized supremacy on the part of the Council.

The second objective behind this Norwegian resolution was correlative with that of democratization. By putting the nominations of the Supervisory Commission in the hands of the Finance Committee the control of the small Powers in their election was assured. The scheme, indeed, was one of great political ingenuity, putting the majority in the Finance Committee in a position of absolute command. The work of the Supervisory Commission is now essential to the functioning of the League. So that even if majority rule were not practised in the Assembly committees, and assuming that something akin

to a filibuster against nominations unwelcome to one or more of the Great Powers were possible on the part of their spokesmen, such action would be unavailing. The only result would be to keep the Assembly's Finance Committee sitting after the normal date for the close of the Assembly session, thus tending to give automatic effect to the Swiss resolution in behalf of permanent Assembly committees, to which Mr. Balfour and M. Viviani objected so strenuously at the First Session of the Assembly.

The resolution, transferring the nominating power from the General Committee to the Finance Committee, was introduced by Mr. Hambro with the comment that "members of the General Committee have usually little knowledge of the work of the Supervisory Commission." He added that as the Fourth Committee reviews the Commission's work it is "the most suitable body to choose its members." Immediately the proposal was supported by the representatives of Italy, Sweden, Liberia, Hungary, Switzerland, and Portugal, indicating a certain amount of preliminary preparation. Log-rolling would be too strong a word, although it may be noted as an interesting coincidence that Italy, the only Great Power which openly indorsed the resolution, had before the same session of the committee certain proposals for the recognition of the Secretariat on which her representative greatly desired small-Power support.<sup>41</sup> With the one amendment, proposed by Dr. Rappard (Switzerland), that the nominations should be made by the committee through secret ballot, the Hambro resolution was adopted, to be approved as a formality by the Assembly six days later.<sup>42</sup>

In the meantime, lots having been drawn, the Supervisory Commission had declared M. Réveillaud as its mem-

<sup>41</sup> See above, p. 276.

<sup>42</sup> *Official Journal*, S. S. No. 83, October 1930, p. 43.

ber due for retirement on December 31, 1930. As soon as authorized by plenary session of the Assembly, the Fourth Committee proceeded under secret ballot to the nomination of his successor, to the nomination of the member to fill the existing vacancy on the commission, and to the nomination of the two substitute members. On October 2, 1930, it transmitted these nominations to the Assembly, as the fifth of a series of resolutions on financial subjects, the one in point reading:

The Assembly appoints as members of the Supervisory Commission for the period ending on December 31, 1933, M. Stefan Osusky and M. Jean Réveillaud; and as substitute members for the period ending on December 31, 1932, M. Jean de Modzelewski [Poland] and M. Georges de Ottlik [Hungary].<sup>48</sup>

The following day the Assembly approved the action whereby its Fourth Committee, under the guise of nomination, has in reality taken over the selection of the members of a permanent League commission. The three-year campaign of the reform group had been completely successful. And during the 1931 Assembly the appropriate finishing touch was given by election to the Supervisory Commission of Mr. Hambro, who had throughout led the skillful campaign for the establishment of complete and definitive Assembly control in the financial field.

The whole story of the change whereby the Assembly took over from the Council the appointment of the League's Supervisory Commission has been given in some detail, partly because it clearly demonstrates that the Assembly is "the sovereign though intermittent power of the League," as was asserted by M. Ferraris as far back

<sup>48</sup> League Document A. 84. 1930. X, p. 6. These two substitute members were the first appointees to the Supervisory Commission to be named without prior consultation with officers of the Secretariat.

as 1920; partly because it reveals the definite tendency towards making the exercise of this sovereign power permanent rather than intermittent; partly because the role played in the whole development by such physically secondary nations as Norway and Switzerland is illustrative of the extent of evolution since Lord Robert Cecil made the misguided prediction that in the work of the League "the smaller Powers will in any case not exercise any considerable influence."<sup>44</sup> One other issue of major constitutional importance in the change still remains to be noticed.

#### ACQUISITION OF PERMANENCE WITHOUT AUTHORIZATION

The Finance Committee of the League has now, without legal criticism from any quarter, assumed the right to appoint the members of the Supervisory Commission, which is an essential and permanent League organ having its immediate constitutional authorization in Article 1(1) of the Financial Regulations, and its ultimate constitutional authorization in Article 5(2) of the Covenant. But where is the express and specific sanction whereby the Finance Committee itself acquires that permanence which one has the right to expect from a committee which takes unto itself the function of periodically appointing the members of a permanent commission?

In several articles (16b-e, 18, 37, and 51) of the Financial Regulations the Finance Committee of the Assembly is referred to, but always with the unjustified assumption that it is a duly constituted permanent body. The Rules of Procedure of the Assembly are equally unsatisfactory as a source of authorization, merely saying in this connection that:

<sup>44</sup> See p. 28 above.

The Assembly shall establish such committees as it thinks fit . . . [Rule 14(1)];

and that:

No resolution involving expenditure shall in any case be voted by the Assembly before the Finance Committee shall have expressed its opinion . . . [Rule 14(2)].

Here also there is the same assumption that the Fourth Committee has an *a priori* constitutional definition. Here again such an assumption is unjustified.

When the first session of the Assembly organized itself, on November 15, 1920, it constituted under Article 5(2) of the Covenant six committees of which the Fourth was then, and has been at every ordinary session of the Assembly since, empowered to "examine and report upon" questions referred to it concerning the finances of the League. But the record shows that several of these committees have since 1920 had their mandates completely altered by the Assembly. At the First Assembly, for instance, its Third Committee dealt only with the question of the Permanent Court of International Justice. At the Second Assembly the function of the Third Committee was changed to a consideration of "armaments and economic weapon," and not until the Third Assembly did this particular committee become specifically concerned, as it is now, with "reduction of armaments," which in 1920 was a duty of the Sixth Committee. Similarly, the only duty of the Fifth Committee of the First Assembly was consideration of "admission of new members to the League," while in recent Assemblies the Fifth Committee has been concerned with "social and general questions." The number of Assembly committees has so far remained constant, but on several occasions the Assembly has exercised its constitutional right not merely to establish but also to abolish "such committees as it sees fit."



It is evident that if the Assembly desired it could give its Finance Committee another number than the Fourth Committee, and such a contingency is foreseen in the reference to this committee as the Finance Committee, and not as the Fourth Committee, both in the Financial Regulations and in the Assembly Rules of Procedure. It seems equally evident, since this has already been done with such committees as that on "Admission of New Members to the League," that the Assembly has the theoretical power not merely to change the number of its Finance Committee, but even to abolish that Committee altogether. References to the Finance Committee in the Rules of Procedure and the Financial Regulations, would not seem to negate that right even though the latter instrument provides that it "shall not be amended except by the Assembly acting upon the advice of its Finance Committee" (Article 51). The theoretical right of the Assembly to terminate the existence of its Finance Committee is inherent in Article 5(2) of the Covenant, which of course has legal priority over the Finance Regulations.

Actually, of course, such action on the part of the Assembly would be inconceivable, but its likelihood is not the issue here. The question is only whether or not the Assembly has the *power* to abolish its Finance Committee, a power which it would seem to possess by the fact of having done so in the case of other committees established in exactly the same way and with exactly the same constitutional authority. If the Assembly has that power, it has now also the overriding power to abolish the Supervisory Commission, which the Council could never have done without Assembly consent during the period when that commission was subordinate to the Council. And, under the hypothesis, this is not the limit of the Assembly's potential authority. By abolishing the Finance Committee the Assembly could accomplish what

not even the collective membership of the League could do by unanimous resignation in less than two years' time,<sup>45</sup> and what no other organ of the League could possibly accomplish by legal means—terminate the existence of the organization altogether.

It is, of course, obvious that without disturbing the Finance Committee the same end could be accomplished were that body merely to refuse appropriations. But to state that truism is merely to strengthen the underlying argument which is here advanced. The Finance Committee will not be abolished by the Assembly, nor will it refuse to make the essential appropriations, just because this, in fact, permanent committee has become the most essential part of the entire League structure. It has, however, assumed that importance through steady accretion of power and not through any formal constitutional authorization. Article 16e and Article 51 of the Financial Regulations, quoted in full earlier in this chapter, and Rule of Procedure 14(2) show that the Finance Committee has acquired a special character. But one seeks in vain elsewhere to find that special character given specific legal recognition.

In theory the Finance Committee is still a temporary body. Yet, paradoxically, it has acquired the power of appointment for the Supervisory Commission, which is permanent. Such constitutional anomalies are an indication of the youth and rapid organic development of the League. Doubtless they will be eliminated in time. But, with equal certainty, they will only be eliminated by substituting permanence for the originally intermittent character of the Assembly. Since the Assembly's actions in the Sino-Japanese dispute, which will be considered in the following chapter, it is no longer unreasonable to expect *de jure* recognition of what has come to be the case *de facto*—that the more democratic body is also the sovereign organ of the League.

<sup>45</sup> The Covenant, Article 1(3).

## CHAPTER XIV

### THE SPECIAL SESSION OF 1932

On March 3, 1932, when the Assembly gathered in extraordinary session to assume control in the Sino-Japanese dispute, there was initiated another development of far-reaching import in the constitutional evolution of the League. We have seen in the previous chapter that from the outset the Assembly has tended to increase its prerogatives, at Council expense, in the field of concurrent authority shared jointly by both organs under the Covenant. As a result of its actions in the Sino-Japanese dispute the Assembly extended previous gains by taking over from the Council control in an area heretofore deemed an exclusive responsibility of the smaller organ. Until 1932 executive action for the preservation of world peace had always been regarded as a function in which the Council rather than the Assembly should take the lead.

Prior to this meeting the Assembly had been convoked in special session only once—in March 1926, to consider the admission of Germany to League membership.<sup>1</sup> Aside from the fact that it failed to achieve its objective, since Germany was not admitted until the Seventh Assembly was regularly convened in September, this first extraordinary session had no particular constitutional significance. It was called under Article 3 (2) of the Covenant to take the vote on admission of a non-member necessary under Article 1 (2). No alteration in the relationships and powers of the League organs was made, and no pur-

<sup>1</sup> Compare pp. 358-60.

pose was served which could not as well have been fulfilled at the next regular session of the Assembly.<sup>2</sup>

Quite otherwise was the case with the second extraordinary session. Summoned in an entirely regular, albeit unprecedented, manner under Article 15(9) the Assembly, in March 1932, found itself confronted with an emergency in which action could not be postponed without risking incurable injury to the prestige of the League. In this emergency, moreover, the Assembly powers, by definition of Article 15(10), were as broad as those possessed by the Council under this article. By exercising these powers courageously and skillfully the Assembly broke new ground and established for itself additional authority as a League organ. This enlargement of authority was made in such a way as to emphasize the responsibility of the Council to the Assembly. And it helped to define the executive character of the smaller organ in relation to the plenipotentiary aspect of the larger. Chapter XII has described how the Council, acting in the Sino-Japanese dispute without any explicit mandate from the Assembly, failed to achieve satisfactory results. The action of the Assembly was in effect to reconstitute and strengthen the Council for the purpose of this dispute, and then to control it with definite instructions under a continuing supervision by the Assembly acting as the parliamentary arm of the League.

#### IMMEDIATE INFLUENCE\* OF THE SMALL POWERS

Fifty nations had delegates on the floor of the Assembly when the extraordinary session dealing with the Far Eastern crisis convened. Of these, forty-five immediately demonstrated the general temper of the gathering by casting their votes for the election of Paul Hymans,

<sup>2</sup> The special session of 1926 appointed the committee which planned reorganization of the Council in its present form. But the actual changes were made by the seventh ordinary session of the Assembly.

Belgian foreign minister, as president of the session. The choice had a dual symbolism, both aspects pointing directly at Japan. Hymans was the representative of a nation weak in the military sense, which had been attacked with as little regard for treaty commitments in 1914 as was shown in the attack on China in 1931. Hymans was also one of the famous Peace Conference Committee which had drafted the League Covenant in 1919 and sought to make it a bulwark against just such acts of *Macht-Politik* as those in which Japan had been indulging.

Similarly significant was the election of the eight Vice-Presidents. In addition to the leading delegates of France, Germany, Great Britain, and Italy, this vote returned a representative of Switzerland, the country which has done most to recognize a super-sovereignty for the League; of Sweden, where governmental opinion had been particularly outspoken in demanding strong League action against Japan; of Mexico, which in 1919 had been kept out of the League at the behest of two Great Powers (the United States and Great Britain); and of Persia, whose representative at the Fourth Assembly (1923) had by his single negative vote prevented the adoption of an interpretive resolution designed to weaken the force of Article 10.

With this auspicious start the Assembly lost no time in bringing home to the Japanese delegation, in a way which the Council had never been able to do, the fact that it meant business. The bureau of the Assembly, composed of its President and eight Vice-Presidents, immediately proceeded to the drafting of a resolution calling for the immediate cessation of hostilities in the Shanghai district and the commencement of negotiations by China and Japan which should "regulate the withdrawal of the Japanese forces." This resolution significantly took up the dispute at the point where the Council

had stopped on February 29, when its President had advised a round-table conference at Shanghai to be undertaken on the basis "that Japan has no political or territorial designs and no intention of establishing a Japanese settlement in Shanghai or of otherwise advancing the exclusive interests of the Japanese."<sup>3</sup> By starting with a reference to this final Council move the Assembly resolution intimated an approval for all of that organ's acts of commission in the dispute, without indorsing its various omissions. The resolution read:

THE ASSEMBLY,

Recalling the suggestions made by the Council on February 29 and without prejudice to the other measures therein envisaged:

1. Calls upon the governments of China and Japan to take immediately the necessary measures to ensure that the orders which, as it has been informed, have been issued by the military commanders on both sides for the cessation of hostilities, shall be made effective;

2. Requests the other Powers which have special interests in the Shanghai settlements to inform the Assembly of the manner in which the invitation set out in the previous paragraph has been executed;

3. Recommends that negotiations be entered into by the Chinese and Japanese representatives with the assistance of the military, naval and civilian authorities of the Powers mentioned above for the conclusion of arrangements which shall render definite the cessation of hostilities and regulate the withdrawal of the Japanese forces. The Assembly will be glad to be kept informed by the Powers mentioned above of the development of these negotiations.<sup>4</sup>

This resolution was presented to the Assembly sitting as its "General Commission," or committee of the whole, on March 4. Then ensued one of the most dramatic scenes which has ever been enacted in any international gathering. Pursuing the obstructive tactics which had

<sup>3</sup> *Procès Verbal*, sixty-sixth Council session, fourteenth meeting, p. 2.

<sup>4</sup> League Document A. (Extr.) 12. 1932. VII.

proved so successful in the Council, the Japanese spokesman, Mr. Naotake Sato, asked for a revision at the end of the first sentence in section three of the resolution to make the clause read: "and regulate *the conditions* of the withdrawal of the Japanese forces." At the outset there thus arose the test of whether the Assembly, like the Council, would permit Japan to emasculate its resolutions so as to leave the military element in that country a virtually free hand.

None of the representatives of the Great Powers opposed the Japanese request and it was left to the spokesmen of three small nations, which incidentally do not possess a battleship amongst them, to force Japanese compliance with the principle of evacuation. From the chair M. Hymans of Belgium pointed out that the authors of the resolution had no intention of leaving to Japanese discretion the "conditions" of withdrawal from Shanghai of that country's army of occupation. A grim silence followed the President's appeal that the Assembly should speak its mind on the issue. It was broken not by spokesmen of France, Germany, Great Britain, and Italy, but by President Giuseppe Motta of Switzerland, who amid applause rose to remind Mr. Sato that "the principle of the withdrawal of the Japanese forces could no longer be questioned"; to give warning that under Article 15(10) the resolution could be passed over Japanese opposition; and to demand a vote on the resolution without amendment. This proposal was given immediate backing by Foreign Minister Benes of Czechoslovakia, whereupon Mr. Sato, sensing the way the tide was running, agreed that Japan could after all accept the resolution in the form presented. It was adopted unanimously, first by the General Commission and then, after transformation of the commission into a full plenary session of the Assembly, by formal roll-call vote.<sup>5</sup>

<sup>5</sup> *Journal*, Special Session of the Assembly, No. 29, pp. 205-07.

## THE BASIC ISSUES CONFRONTED

Having set the pace in this dramatic manner the representatives of the so-called secondary Powers vigorously maintained their lead. In the general discussion on the dispute which was opened in the Assembly on March 5 representatives of seventeen small States spoke before the leading delegates of the permanent Council members were called upon. Nor did these last show that they had anything of particular value to contribute to the discussion, although the British representative asserted that situations brought about by military force "manifestly could not receive the approval of members of the Assembly."<sup>6</sup> The interest in the debate, which continued through March 8, was shown by the fact that in all twenty-nine of the lesser States, drawn from every continent, contributed thereto.<sup>7</sup>

The speeches of these representatives of the smaller Powers were noteworthy in ways other than the unanimous condemnation of Japanese procedure which they embodied. There was manifest a widespread insistence that the Assembly should avoid the mistakes of the Council by ignoring detail and concentrating on the matters of principle involved in the dispute. There was a unanimous realization of the responsibility placed on the Assembly by the failure of the Council to settle the dispute, and an equally unanimous determination that this League organ should face up to the responsibility.

Aside from these generalities several of the speakers showed themselves keenly aware of the loopholes and weaknesses in the Covenant which had enabled Japan to violate its spirit while maintaining a strong show of legal-

<sup>6</sup> *Minutes*, General Commission, fourth meeting, p. 6.

<sup>7</sup> These participants in the discussion, in order of speaking, were: Norway, Colombia, Mexico, Sweden, Finland, Netherlands, Denmark, Switzerland, Spain, Estonia, Czechoslovakia, Greece, Persia, Uruguay, Portugal, Roumania, Poland, Panama, Irish Free State, Salvador, Hungary, Haiti, Canada, Bulgaria, Jugoslavia, South Africa, India, Latvia, Bolivia.



ity within the letter of the League's organic act. In the words of M. Titulesco (Roumania), the League, in exhausting all the possibilities of the Covenant, would show a vitality "such as would render it necessary to supply the omissions in its constitutional charter."<sup>8</sup> To M. Zaleski (Poland) it appeared evident that confronted with a recalcitrant nation "any action undertaken by the Council and by the Assembly will encounter grave difficulties as long as the rules of law governing the League are not sufficiently clear and complete."<sup>9</sup> M. Mazuranic (Jugoslavia) concluded that the very complexity and obduracy of the problem rendered it the more necessary for the League "to persevere in perfecting its organization."<sup>10</sup> These admissions of the imperfections in the League's Constitution assisted Mr. Sato to maintain, at the close of the discussion before the Assembly, that "Japan has accepted the Covenant in its entirety. She wishes to see it applied without exception or derogation, but with some consideration for facts as they are and of the realities which had been foreseen by its authors and inscribed in the text itself."<sup>11</sup>

Another step emphasizing the leadership of the smaller Powers was taken at the close of the general discussion on the evening of March 8, when the question arose of the composition of the committee which should frame the general resolution of the Assembly with regard to the Sino-Japanese dispute as a whole. Previously, Assembly drafting committees had normally been dominated by representatives of the Great Powers. On this occasion M. Benes proposed that any delegate submitting a resolution should automatically become a member of the drafting committee, thus effectively preventing any Star Chamber tactics to shut off consideration of strongly

<sup>8</sup> *Journal*, Special Session of the Assembly, No. 31, p. 230.

<sup>9</sup> The same, p. 232.

<sup>10</sup> The same, No. 32, p. 247.

<sup>11</sup> The same, p. 250.

worded texts. Supported by the delegates of Norway and Sweden this proposal was skillfully put through by President Hymans.<sup>12</sup> The result was that the representatives of the Great Powers abandoned any attempt to write the resolution, Great Britain being the only one to submit a draft, which was considered side by side with drafts presented by the delegations of Colombia, Czechoslovakia, Estonia, Finland, Greece, Norway, Salvador, Spain, and Switzerland.

Acting on the assumption that deference should be paid to the principles of the Covenant, rather than to the technical objections raised so freely by Japan, the drafting committee took only two days to prepare the most important resolution on a political subject brought before the Assembly up to this time. Such speed presented a marked contrast with the dilatory nature of Council procedure, that organ having taken seventeen days at Paris to draft the resolution establishing a commission of inquiry in the Sino-Japanese dispute.<sup>13</sup> The greater celerity of the Assembly was of course in part due to the fact that conciliation of the two disputants was now no longer the most imperative need. But it was also facilitated by the more positive psychology of the larger League organ and the greater efficiency of the Assembly in parliamentary technique. The drafting committee, for instance, went quickly to work by separating the forthcoming resolution into the two divisions of general principles applicable to the dispute and specific recommendations as to procedure to be followed by the Assembly therein. Each of the small sub-committees appointed to deal with these two categories was able to accomplish its task without delays caused by consideration of the viewpoint of the other. The task of the drafting committee as a whole then became the relatively

<sup>12</sup> The same; see also the *New York Times*, Mar. 9, 1932.

<sup>13</sup> Compare pp. 465-66 above.

simple matter of approving and amalgamating the two texts.

#### ASSEMBLY RESOLUTION OF MARCH 11

On the morning of March 11 the Assembly was again convened in the form of its General Commission to receive the text of the resolution from its bureau. Open discussion was then held on the three chapters of the draft, which respectively affirmed the principles of the Covenant and the Pact of Paris; indorsed the previous actions of the Council in the dispute; and laid down procedure of a most far-reaching nature for continuing control therein by the Assembly. A few changes in text were made by the General Commission, the most important, taken at the instance of Sir John Simon (Great Britain), being a decision to name the Pact of Paris as well as the Covenant as instruments in contravention of which no "situation, treaty or agreement" would be recognized as binding by League members.

Following these changes the Assembly listened to a declaration by Mr. Sato in which he expressed the conviction of the Japanese government that it had "faithfully observed the provisions of the Covenant of the League and the Pact of Paris" and its "firm decision always to act according to their principles." Recalling the fact that Japan had before the Council raised objection to the application of Article 15 as well as Article 11 to the Manchurian aspects of the dispute,<sup>14</sup> Mr. Sato said that the Japanese government would be unable to cast its vote in favor of the draft resolution. But rather than oppose adoption the Japanese delegation would abstain from voting thereon. Adoption of the resolution by the General Commission was then signaled by a show of hands. On the evening of the same day the Assembly,

<sup>14</sup> The Council had overruled this Japanese contention. See pp. 483-85 above.

meeting in plenary session, confirmed this action with a roll-call vote in which, of the forty-six national delegations present, forty-four voted in favor of the resolution while China and Japan abstained.<sup>15</sup> The text of the resolution as thus carried by technical unanimity read:

## I

### THE ASSEMBLY,

Considering that the provisions of the Covenant are entirely applicable to the present dispute, more particularly as regards:

- 1) the principle of a scrupulous respect for treaties;
- 2) the undertaking entered into by members of the League of Nations to respect and preserve as against external aggression the territorial integrity and existing political independence of all the members of the League;
- 3) their obligation to submit any dispute which may arise between them to procedures for peaceful settlement;

Adopting the principles laid down by the Acting President of the Council, M. Briand, in his declaration of December 10, 1931;

Recalling the fact that twelve members of the Council again invoked those principles in their appeal to the Japanese government on February 16, 1932, when they declared "that no infringement of the territorial integrity and no change in the political independence of any member of the League brought about in disregard of Article 10 of the Covenant ought to be recognised as valid and effectual by members of the League of Nations";

Considering that the principles governing international relations and the peaceful settlement of disputes between members of the League above referred to are in full harmony with the Pact of Paris, which is one of the corner-stones of the peace organisation of the world and under Article 2 of which "the High Contracting Parties agree that the settlement or solution of all disputes or conflicts, of whatever nature and whatever origin they may be, which may arise among them shall never be sought except by pacific means";

Pending the steps which it may ultimately take for the settlement of the dispute which has been referred to it;

<sup>15</sup> The Chinese failure to vote affirmatively was due solely to delay in the arrival of telegraphic instructions to that effect from Nanking.

Proclaims the binding nature of the principles and provisions referred to above and declares that it is incumbent upon the members of the League of Nations not to recognise any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris.

## II

### THE ASSEMBLY,

Affirming that it is contrary to the spirit of the Covenant that the settlement of the Sino-Japanese dispute should be sought under the stress of military pressure on the part of either party;

Recalls the resolutions adopted by the Council on September 30 and on December 10, 1931, in agreement with the parties;

Recalls also its own resolution of March 4, 1932, adopted in agreement with the parties, with a view to the definite cessation of hostilities and the withdrawal of the Japanese forces; notes that the Powers members of the League of Nations having special interests in the Shanghai settlements are prepared to give every assistance to this end, and requests those Powers, if necessary, to co-operate in maintaining order in the evacuated zone.

## III

### THE ASSEMBLY,

In view of the request formulated on January 29 by the Chinese government invoking the application to the dispute of the procedure provided for in Article 15 of the Covenant of the League of Nations;

In view of the request formulated on February 12 by the Chinese government that the dispute should be referred to the Assembly in conformity with Article 15, paragraph 9, of the Covenant and in view of the Council's decision of February 19;

Considering that the whole of the dispute which forms the subject of the Chinese government's request is referred to it and that it is under an obligation to apply the procedure of conciliation provided for in paragraph 3 of Article 15 of the Covenant and, if necessary, the procedure in regard to recommendations provided for in paragraph 4 of the same article;

Decides to set up a committee of nineteen members, namely, the President of the Assembly, who will act as chairman of

the committee, the members of the Council other than the parties to the dispute and six other members to be elected by secret ballot.

This committee, exercising its functions on behalf of and under the supervision of the Assembly, shall be instructed:

1. To report as soon as possible on the cessation of hostilities and the conclusion of arrangements which shall render definitive the said cessation and shall regulate the withdrawal of the Japanese forces in conformity with the Assembly resolution of March 4, 1932;

2. To follow the execution of the resolutions adopted by the Council on September 30 and December 10, 1931;

3. To endeavour to prepare the settlement of the dispute in agreement with the parties, in accordance with Article 15, paragraph 3 of the Covenant, and to submit a statement to the Assembly;

4. To propose, if necessary, that the Assembly submit to the Permanent Court of International Justice a request for an advisory opinion;

5. To prepare, if need be, the draft of the report provided for in Article 15, paragraph 4, of the Covenant;

6. To propose any urgent measure which may appear necessary;

7. To submit a first progress report to the Assembly as soon as possible and at latest on May 1, 1932.

The Assembly requests the Council to communicate to the committee, together with any observations it may have to make, any documentation that it may think fit to transmit to the Assembly.

The Assembly shall remain in session and its President may convene it as soon as he may deem this necessary.<sup>16</sup>

#### CONSTITUTIONAL IMPORTANCE OF THE RESOLUTION

As an assertion of League authority, as creating precedents for future action, and as a virtual definition of the sovereign power of the Assembly within the structure of the League, the constitutional importance of the above resolution was of the first magnitude. Its implications as one of the greatest of landmarks in the political evolu-

<sup>16</sup> League Document A. (Extr.) C. G. 1(1).

tion of the organized society of nations demand at least brief consideration.

It is to be noticed, first of all, that the entire resolution is based upon an assertion of the Assembly's competence to interpret and to apply, in whole or in part, the organic law of the League. This assertion of competence, however, is fundamentally only a practical application of the authority specified for the Assembly by Article 3 (3) of the Covenant. More novel is the action taken to place the Pact of Paris under the formal protection of the League, thus going a long way towards amalgamating this instrument with the Covenant in everything but formal incorporation. This is achieved not merely by definition of the Pact of Paris as "one of the cornerstones of the peace organization of the world," but also by the assertion that League procedure for the peaceful settlement of disputes is "in full harmony" with the Pact.

This establishment of intimate relationship between Covenant and Pact serves to justify the outstanding declaration in the last paragraph of Chapter I of the resolution, whereby the Assembly virtually instructs its members to refuse diplomatic recognition of any arrangement reached in the Far East through the exercise of *force majeure* by Japan. The wording of this declaration is taken directly from that of the American note of January 7, 1932, with the distinction that while the United States used the phrase "does not intend to recognize" the Assembly phraseology states "that it is incumbent upon the members of the League not to recognize."<sup>17</sup> Since the League is not a super-State it of course cannot express intention with regard to the policy of its members. Yet for every practical purpose the "should not" of the League Assembly is probably no less effective than the "will not" of the American Department of State.

<sup>17</sup> Compare p. 479 above.

And there is a novel character to this League pronouncement in as much as it sets forth an international policy which does not require ratification by the governments of the member States.

The first chapter of the resolution is also notable for its forthright dismissal of various legalistic contentions by means of which Japan had successfully impeded Council action in the dispute. The opening clause flatly contradicts the thesis that China in 1932 was not entitled to the protection of the Covenant.<sup>18</sup> This is followed by a positive affirmation of the validity of Article 10 with consequent intimation that Japan had violated the spirit if not the letter of that article and ignored its obligations under Article 12. The resolution then sustains by direct citation the note of February 16, 1932, addressed by the twelve neutral members of the Council to Japan, which that government had refused to recognize as compatible with the procedure of the League.<sup>19</sup> This Assembly indorsement of procedure strongly resented by a disputant would seem to establish a precedent whereby the recalcitrance of a single member need not in future prevent action by the remainder of the Council even where the unanimity rule applies.

In its second chapter the resolution confirms as a formal interpretation of the Covenant the thesis that rights cannot be established by violation of existing obligations. By this action, taken in concert with the United States, a long step has been taken towards outlawry of the doctrine of armed intervention at the will of individual Powers.<sup>20</sup> In its place is substituted an affirmation of the right of the League to call upon its members to exercise

<sup>18</sup> Compare p. 492 above.

<sup>19</sup> See pp. 489 ff. above.

<sup>20</sup> The refusal to recognize settlements made "under the stress of military pressure" was based upon the lead given by Secretary Stimson in his statement of Dec. 10, 1931. Compare p. 477 above.



police authority "in maintaining order" in an area of dispute.

From the viewpoint of extension of Assembly powers the third chapter is the most important in the resolution. It interprets the Council's reference of the Sino-Japanese dispute to the Assembly as covering "the whole of the dispute," thereby overruling the Japanese contention that the jurisdiction of the larger organ should be limited to the difficulties at Shanghai. Here is laid down the novel doctrine that the Assembly has final right of determination on an issue raised before the Council but not definitely decided by that organ.

The resolution then proceeds as an act of "decision" to establish an Assembly committee empowered to maintain control of the dispute and authorized "to propose [for approval by its parent body] any urgent measure which may appear necessary." This committee is placed under the presidency of the representative of a small Power; it expressly excludes representation of the disputant parties; and the duration of its mandate is not limited. It is, in effect, a reconstitution of the Council, the twelve neutral members of this organ being placed thereon. But the influence of the permanent Council members is sharply curtailed and the committee acts as a direct agent of the Assembly. The right of the Assembly to take from the Council complete control of a dispute is therefore supplemented by utilization of a modified Council as an organ subordinate to the Assembly. This new Assembly committee is further empowered to pose the issue of violation of the Covenant for an advisory opinion by the World Court. And, finally, the right of the Assembly to remain permanently in session, which in 1920 would probably have been regarded as unconstitutional and revolutionary doctrine, is asserted without qualification and as a matter of course.

The tendency to merge the identity of the Council with that of the Assembly's new Committee of Nineteen was further demonstrated in the choosing of the "six other members" authorized by the third chapter of the resolution. The voting for these took place immediately after the passage of the resolution and was conducted under that part of the Assembly's Rules of Procedure which governs the election of the non-permanent Council members.<sup>21</sup> The displacement of Council authority by the Assembly, for the purposes of the Sino-Japanese dispute, was strikingly symbolized when the Committee of Nineteen on March 17 held its first public session at the Council's own famous horseshoe table in the Council chamber. No body other than the Council had ever before sat at this table to conduct League business.

#### "ACTION DEVELOPING INTERNATIONAL LAW"

Although China and Japan had abstained from voting on the resolution of March 11, both of these States participated in the secret Assembly balloting that evening for the six elective members of the Committee of Nineteen. By exercising its right to participate in this executory measure of the resolution the Japanese government tacitly admitted the binding force of the entire document, an action which was to have significance later when Tokyo argued that application of Article 15 of the Covenant to the Manchurian aspects of the dispute had never been agreed to by Japan. It is also noteworthy that the six members elected to the committee were for the most part nations whose representatives had taken radical positions in the Assembly debate on the dispute. With the votes obtained by each they were: Switzerland (38), Czechoslovakia (35), Colombia (31), Portugal (26), Hungary (24), and Sweden (24).

<sup>21</sup> Rule 22a. See also *Journal*, Special Session of the Assembly, No. 35, p. 272.

Following these elections the Assembly, though not the new standing committee, was adjourned to meet at the call of its President. Even before its adjournment, counting the difference in time between Geneva and Washington, the American Secretary of State had issued in the latter city a statement giving unqualified approval to the Assembly resolution and calling attention to its implications for the development of international law. Mr. Stimson's statement of March 11, made public after a conference with President Hoover, follows:

The nations of the League at Geneva have united in a common attitude and purpose towards the perilous disturbances in the Far East. The action of the Assembly expresses the purpose for peace which is found both in the Pact of Paris and the Covenant of the League of Nations. In this expression all the nations of the world can speak with the same voice. This action will go far toward developing into terms of international law the principles of order and justice which underlie those treaties and the government of the United States has been glad to co-operate earnestly in this effort.<sup>22</sup>

With the adoption of the resolution of March 11, 1932, the Assembly firmly established not merely its ascendancy as the dominant organ within the League, but also its right to be regarded as a body possessing greater powers than can properly be attributed to an international conference, even of the type where periodic meetings are provided. In degree of decisiveness as well as in comparative celerity there was marked contrast between the procedure of the Council and that of the Assembly in the Sino-Japanese dispute. Equally pronounced was the manner in which the Assembly refused to permit itself to be blocked, as was the Council, by the unanimity rule. The actions of the Assembly, taken under the Covenant as it stands, were significantly supplemented by statements from a number of representatives to the effect

<sup>22</sup> Department of State: *Press release*, Mar. 11, 1932.

that omissions in the Constitution hampering the exercise of sovereign power by the League should be supplied. Most important of all, as Mr. Stimson immediately pointed out, the establishment of new precedents as regards collective measures in the settlement of international disputes has had the effect of enlarging the *corpus* of international law. It is apparent that this enlargement was effected by the Assembly in a manner which was more than conferential in character. The action of the organ was at least of quasi-legislative type.

#### THE RESULT OF ASSEMBLY PRESSURE

Fundamentally, however, the constitutional importance of this Assembly resolution depended on the fact that it proved efficacious in practise. The special session was convened on March 3, 1932. On May 5, just nine weeks later, the Japanese and Chinese plenipotentiaries at Shanghai signed an agreement which carried into effect the fundamental principle that settlement of the dispute should not be made "under the stress of military pressure." By this agreement, completed in the presence of the American, British, French, and Italian negotiators authorized by the resolution of March 4, the *status quo* at Shanghai was re-established, the first part of its third article reading:

The Japanese troops will withdraw to the International Settlement and the extra-settlement roads in the Hongkow district as before the incident of January 28, 1932.

When the Assembly met in special session the Japanese military, at heavy cost in lives and wealth, had successfully shattered the Chinese defense at Shanghai and had seemingly placed the Tokyo government in a position to set its own price for evacuation. When the special session of the Assembly adjourned, unconditional evacuation of the invaded area at Shanghai had been agreed to and all

plans for the extension of Japanese hegemony at that Chinese port were compulsorily laid aside. That this withdrawal was in response to Assembly pressure was practically admitted by the Japanese representative at the closing meeting of the session, on April 30,<sup>23</sup> and by the Foreign Office in Tokyo on May 11, when it was said that the decision to evacuate "was due to a desire to conform with world opinion and to end the world-wide odium which has fallen upon us."<sup>24</sup>

The special session of the Assembly attempted no settlement of the highly complicated Manchurian aspects of the Sino-Japanese dispute, leaving these for later determination on the basis of the findings of the League's Commission of Inquiry. But for Manchuria, as for Shanghai, it laid down the far-reaching principle, of American origin, that:

It is incumbent upon the members of the League of Nations not to recognise any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris.

On the basis of this revolutionary doctrine, and by the organization of that moral pressure which President Wilson had foreseen as the League's most potent instrumentality, the Assembly met and overcame the challenge at Shanghai of one of the world's greatest military Powers. No society can be expected to give guarantees against occasional outbreaks of brute force. But any society deserving that name must insure that such outbreaks shall not be profitable to those who sponsor them. Just this the Assembly, as the sovereign organ of the League of Nations, accomplished by its extraordinary session of 1932.

<sup>23</sup> Compare *Journal*, Special Session of the Assembly, No. 60, p. 484.

<sup>24</sup> *New York Times*, May 12, 1932.

## CHAPTER XV

### THE ASSEMBLY AS INTERNATIONAL PARLIAMENT

The parliamentary character of the Assembly is confirmed when we turn from our examination of the actions of a special session of extraordinary constitutional importance, to a consideration of the organization, procedure, and political characteristics of the normal Assembly session, as developed by twelve years of experience and evolution. In such a consideration a glance at the physical arrangements is a desirable preliminary. These will be greatly improved with completion of the \$2,500,000 Assembly Hall, where committee rooms will be adjacent to the parliamentary chamber. But in essentials continuation of the seating arrangements used during the early years of makeshift may be expected, with the representatives seated by nationality in default of party divisions.<sup>1</sup> At one end of the hall is the presidential tribune, occupied by the presiding officer, the Secretary-General and his chief assistants, and the interpreters. The body of the hall is filled by the desks of the various delegations, divided by aisles and arranged alphabetically according to the French names of the countries represented.

Thus, on the first row, directly under the presidential tribune, sit the delegations of South Africa (*Afrique du Sud*), Albania, Germany (*Allemagne*), Australia, Austria, etc. On the last row, well to the back of the hall, are found Switzerland, Czechoslovakia (*Tchécoslovaquie*), Uruguay, and Venezuela. It is amusing to realize

<sup>1</sup> The first ten sessions of the Assembly were held in a Geneva concert hall known as the *Salle de la Reformation*. In 1930 transfer was made to a more modern and adequate building—the *Bâtiment Électoral*—which will be utilized until the permanent quarters are available.

that the United States, if present, would under French nomenclature be saved from occupying a back seat. As États-Unis the most important non-member would be well to the fore of the Assembly hall, sandwiched between Estonia and Éthiopie, as Abyssinia is named in French.

#### THE OPENING OF AN ASSEMBLY SESSION

The organization of the Assembly, as a result of past experience, is now handled with great smoothness and dispatch. The opening day is generally enough to arrange the preliminary, but not unimportant, details of mechanism.

At the outset the chair is taken by the President of the Council, which customarily opens its September sessions a few days before the Assembly is convened. He declares the session open and calls for the election of the Credentials Committee. Under Rule 5(3) of the Assembly's Rules of Procedure this committee "shall be elected by the Assembly by secret ballot." In practise, the President of the Council reads to the Assembly a list of the names of eight delegates which has been prepared by the Secretariat in advance. There being no objection the Committee on Credentials is then declared elected. This is not the only instance in which actual Assembly practise differs from that which is laid down in the Rules of Procedure, though the divergences are more pronounced in the case of the Council.<sup>2</sup>

This formality removed, the President of the Council reads his opening speech, which is in the nature of a review of the outstanding events of the year as they affect the League, and which has also been prepared, at least in draft, by the Secretariat. The Committee on Credentials, which during the speech of the chairman has withdrawn to examine the authorizations of the delegates from their respective governments, then makes its report.

<sup>2</sup> Compare pp. 390 ff. above.

After adopting it the Assembly proceeds to the election of its President.

The Assembly presidency affords its incumbent opportunity not merely to determine whether the plenary meetings shall be smoothly run but also to influence to some extent the tenor of general discussion.<sup>8</sup> For this reason careful preliminary work is done in the Secretariat, under the direction of the Secretary-General himself, to insure that the presiding officer to be elected shall be both popular and a judicious parliamentarian. To avoid jealousy among the Great Powers the Secretariat nomination is invariably offered to the leading representative of a secondary State. The extent of the preliminary electioneering in this field is shown by the fact that there has never been any real contest over the presidency of the Assembly, and that the Secretariat nominee generally receives at least 90 per cent of the votes cast, with consequent election on the first ballot. The issue is one which illustrates the importance of harmonious relations between the Secretary-General and the heads of the different national delegations. An Assembly session might encounter grave difficulties at the outset if the candidate of the Secretariat were turned down, and a protracted fight initiated between favorites of different groups, none of whom in such circumstances would be assured of the majority necessary for election.

<sup>8</sup> Rule 8 of the Assembly Rules of Procedure defines the duties of the Assembly President as follows:

1. The President shall announce the opening, suspension and adjournment of the meetings of the Assembly, direct the work of the Assembly, ensure the observance of the Rules of Procedure, accord the right to address the Assembly, declare the debates to be closed, put questions to the vote, and announce the result of the voting.

2. In the general direction of the work of the Assembly, in the constitution of such committees as the Assembly decides to create, in deciding on the communications to be made to the Assembly, in the framing of the agenda for each meeting, and in the determination of the order of priority for its various items, the President shall be assisted by the General Committee.



After his election, the President of the Assembly replaces the President of the Council in the chair of the presiding officer and delivers a brief address, generally read from a carefully prepared manuscript immediately after the newly chosen officer has expressed his deep appreciation of the unexpected honor. When this stage of the Assembly organization has been reached the opening morning meeting is generally terminated, giving time over the luncheon hour for further preliminary arranging.

#### CONSTITUTION OF THE GENERAL COMMITTEE

After the election of the President comes that of the six Vice-Presidents. The vice-presidency is a nominal office of value only in so far as it gives the holder a place on the General Committee of the Assembly.<sup>4</sup> The Vice-Presidents are customarily the leading delegates of the States with permanent seats on the Council, plus the chief delegates of one or two secondary Powers to which an honor from the League in recognition of helpful policy, or as a personal tribute, may seem to be due. As the chairmen of the six Assembly committees are *ex officio* vice-presidents the selection of a Great Power national as a committee chairman acts to debar that country from direct election to a vice-presidency. In recent years no Italian has been elected a vice-president because Signor Scialoja, the famous Italian jurist, has regularly been chosen as chairman of the First Committee (Constitutional and Legal Questions).<sup>5</sup>

<sup>4</sup> The General Committee is not to be confused with the General Commission, which is the Assembly sitting as a committee of the whole. See p. 548 above.

<sup>5</sup> In 1929 the proposal was made that the number of vice-presidents of the Assembly should be increased from six to eight, on the theory that the office was too closely confined to representation of the Great Powers. The Eleventh Assembly rejected this proposal because the committee chairmen are *ex officio* vice-presidents. At special sessions of the Assembly, where the six committees are not appointed because there is only one subject on the agenda, eight vice-presidents are elected. Compare p. 547 above.

Over the luncheon period on this day of organization the six committees which do the real work of the Assembly have been constituted, and on the proposal of the President the Assembly distributes the various items on the agenda among them. The allocation of members to these committees is handled by each delegation without any outside assistance, on the basis of the fitness of the representatives for the particular tasks entrusted by the Assembly to the several committees. While each delegation is limited to three official representatives there may be any number of substitute delegates and technical experts. The countries which send Assembly delegations of twenty or more persons have therefore no difficulty in filling the committee assignments effectively. For certain of the Latin American countries, which are often represented by only one or two delegates, the task is more difficult. It is obvious that if a single delegate is supposed to sit on more than one committee, his attention to its work, particularly since at least three of the committees generally sit simultaneously, will be somewhat perfunctory.<sup>6</sup> It follows that no country which sends a delegation of less than six to the annual Assembly is likely to play an important part in its deliberations.

The chairmen of the six committees, elected by those committees themselves, plus the six Vice-Presidents, the President of the Assembly, and the chairman of the Agenda Committee, compose the General Committee of the Assembly. The Agenda Committee is named by the President, subject to Assembly approval, and has full control over the procedure in regard to items on the program, particularly with reference to those which may

<sup>6</sup> Normal procedure is for the First, Second, and Sixth Committees to sit simultaneously; so also the Third, Fourth, and Fifth Committees, the two groups alternating.

be introduced during the session itself. The presence of the chairman of the Agenda Committee on the General Committee is not yet authorized by the Rules of Procedure of the Assembly, but having been an accepted custom since 1926 may now be considered an established rule. The General Committee is a steering organization entrusted with the general expedition and co-ordination of the Assembly's work. It has large discretionary powers and upon its decisions, as much as upon the ability and personality of the President, depends the smooth functioning of the entire organism.

#### DEBATE ON THE ANNUAL REPORT

Its organization completed, the Assembly proceeds to a general debate on the annual report of the Secretary-General.<sup>7</sup> This report is circulated to the governments of States members of the League in two documents. The first part is generally prepared by the Secretariat in May, as soon as the budget estimates for the forthcoming year are in hand. A supplementary report is forwarded shortly before the opening of the Assembly.

Rule 15 of the Rules of Procedure says:

1. No representative may address the Assembly without having previously obtained the permission of the President.
2. Speakers shall be called upon in the order in which they have signified their desire to speak. The chairman and the *rapporteur* of a committee may be accorded precedence for the purpose of defending or explaining the conclusions arrived at by their committee. The same principle shall apply to any member of the Council.

<sup>7</sup> See Assembly resolution of Sept. 29, 1922 (*Official Journal*, No. 9, October 1922, p. 15): "The agenda of a general session shall include a report on the work of the Council since the last session of the Assembly, on the work of the Secretariat, and on the measures taken to execute the decisions of the Assembly."

3. The President may call a speaker to order if his remarks are not relevant to the subject under discussion. If necessary, he may direct the speaker to resume his seat.

4. When a motion is under discussion, a representative may rise to a point of order, and such point of order shall be immediately decided by the President in accordance with the Rules of Procedure.

5. The Assembly may limit the time allowed to each speaker.

As the above regulations indicate, the "debate" on the annual report is highly regularized. The discussion takes the form of rather general speeches which customarily are either in the nature of a survey of national accomplishments in forwarding League objectives, or a carefully prepared critique on some aspect of League policy. Usually, from twenty-five to thirty of the principal delegates speak from the Assembly platform and there is no rule against speeches being made by more than one member of a national delegation. On the other hand, there are always some delegations which make no formal contribution to the discussion. It is during this general discussion that "keynote speeches," setting the general tone for the considerations of the current Assembly, are delivered by the outstanding statesmen at the Assembly.

While it is not infrequent for a speaker's time to be limited, paragraphs 3 and 4 of Rule 15 above are very seldom invoked. A case in point may be cited from the Eleventh Assembly. In that part of the general discussion which was concerned with the scheme for European federal union the delegate of Haiti, M. Dantès Bellegarde, indulged in a very frank denunciation of what he termed "the economic and financial imperialism of the United States of America." M. Bellegarde was not called to order when he observed, perhaps with prevision of coming South American financial defaults, that "Latin American borrowers see behind every Yankee capitalist the shadow

of serried ranks of American marines or the looming silhouettes of American super-dreadnaughts."

The above quotation might seem to indicate that there is complete freedom of speech on the Assembly platform. There are, however, certain limitations upon the different delegates other than the discretion of the President and the common sense, or lack of it, of the orator. No delegate, not even if he himself happens to be the whole delegation, has a complete measure of individual freedom. His personal viewpoint is supposed to be subordinated to that of his delegation, which in turn must at least be acceptable to the government which has named its members. During the first sessions of the Assembly this issue was put to the test by Mr. G. N. Barnes, a Labor member of the British delegation, who on several occasions voiced in the Assembly opinions which were at variance with those of the delegation as a whole. In the words of Mr. Barnes himself, this "ended my career as Assembly delegate."<sup>8</sup>

Speakers in the general debate have the right, as is customary in almost all parliamentary assemblies, to revise their remarks for the record. The result in the case of those orators who speak extemporaneously is sometimes rather startling. The excerpts below give a paragraph of M. Briand's speech on European federation before the Eleventh Assembly as taken down by the official stenographers, and as printed later in the verbatim record. In such revisions it is generally not difficult to find reasons other than stylistic deficiencies in the actual delivery. The example below shows how the advisers of the French Foreign Minister toned down his actual statement that "we are in complete agreement on the principle" of European federal union.

<sup>8</sup> *Headway*, September 1930, Vol. XII, No. 9, p. 170.

## STENOGRAPHIC RECORD

I come before you in the name of twenty-seven nations who have agreed unanimously that a union for peace would be of capital importance and would assist the League of Nations in its work. After careful study of more than a year, after examination of all points connected with this idea, we are in complete agreement on the principle. Naturally, there are different interests. There are many different problems to consider. We cannot hurry too much in this matter, but we are agreed that the great thing is that we have officially undertaken this work and that the union of Europe is at last becoming a practical fact.

## VERBATIM RECORD

I am here today to tell you, on behalf of the twenty-seven European nations which assembled here three days ago, that, having given the matter their careful consideration, they have agreed that close co-operation in all international activities is of capital importance for the maintenance of peace.

Having discussed the question during the past year, and viewed the problem from every angle with the serious attention that governments bring to this kind of work, this is the conclusion we bring you—a conclusion which embodies a principle, a conclusion which is somewhat idealistic, perhaps, but still a conclusion.

## THE SIX COMMITTEES

About a week of morning and afternoon meetings is devoted to the general debate. At its close the six main committees of the Assembly, having in the meantime organized and with the help of the Agenda Committee prepared their respective programs of work, begin the preparation of the reports and resolutions. During this third stage of Assembly procedure the plenary meetings are adjourned and all attention is concentrated on the analysis and synthesis of committee work. The division of the agenda between the committees is as follows:

- First Committee—constitutional and legal questions
- Second Committee—work of the technical organizations
- Third Committee—reduction of armaments

- Fourth Committee—administrative and financial questions
- Fifth Committee—social and humanitarian questions
- Sixth Committee—mandates, minorities, political questions

As pointed out on page 542 above, the subjects treated by the committees have changed, although their number has remained constant. Since the Third Assembly, however, the same responsibilities have been allocated to the same committees each year and the division of work may now be regarded as stabilized. Each committee elects its own chairman, and the tendency is growing to choose presiding officers who are reasonably expert in the fields under consideration. It is noteworthy that with few exceptions the committee chairmen are present or former cabinet officers. Since tangible accomplishments by the League depend fundamentally on smooth and swift work in these committees, the importance of having them headed by men of trained executive capacity is obvious. There is a general observation of the logical principle that delegates with expert qualifications should be placed on the committees where their professional knowledge will be most useful.

Under the guidance of the General Committee of the Assembly the six specialized committees get through their work at approximately the same time. This accomplishment requires a good deal of management, since the committees are not of equal importance and the magnitude of their respective programs varies considerably. The number of meetings may differ from as few as ten, in a committee where the work is largely formal, to as many as twenty in the Finance (Fourth) Committee, which is the most active of all. Night sessions are sometimes called for committees whose program is falling behind the general level of progress. Sub-committees and drafting committees are freely appointed, and there are occasional joint meetings where the expert technical advice of one committee (generally the legal or financial)

is desirable to facilitate the work of another. As the committees clear up their respective programs the Assembly is reconvened in plenary session to act on the resolutions sent in. While the period devoted entirely to committee meetings is generally about a week, some of them may continue sitting for several days after the plenary sessions have been reconvened.

The procedure of these committees is somewhat haphazard and not infrequently a situation arises in which more than one resolution is under discussion at the same time. While this is at first very confusing to those trained in Anglo-Saxon parliamentary procedure, it causes no serious difficulty under the *rapporteur* system, which prevails throughout the League. The *rapporteur*, who is elected in the committee at the beginning of examination of a particular subject, is expected to follow the trend of the discussion through all its vagaries. It is then his duty to present an accurate summation in the final report which will be presented to the committee with a draft resolution when the debate on this subject is closed. It is frequently necessary to establish a drafting committee to aid the *rapporteur* in preparing his final presentation, and the appropriate section of the Secretariat is always at hand to furnish technical assistance in this matter. Each committee has as its secretary a director of section or other Secretariat official responsible in its particular field.

#### RESUMPTION OF PLENARY SESSIONS

The fourth and last stage of Assembly procedure comes with the resumption of sittings of the House to act upon the reports and accompanying resolutions or recommendations (*vœux*) submitted to it from the six committees. On each subject the *rapporteur* reads to the Assembly the specific report and resolution as adopted in committee. As these texts have already been very carefully



scrutinized by the committees in their capacity of expert bodies, acceptance by the whole Assembly is in most cases, though not always, a formality. There is a mechanical disadvantage in the size of the committees, composed of one member from each of the nations represented in the Assembly, except in the case of those countries which do not send enough delegates to go around. On the other hand, their thoroughly representative nature means that conclusions on which they have reached agreement can be accepted with confidence by the whole Assembly.

When there has been a deadlock in committee, as was frequently the case with the disarmament resolutions prior to the convening of the Conference for the Reduction and Limitation of Armaments, opportunity is afforded to the protestants to put their argument before the entire House. Under the unanimity rule it is then always possible to obstruct the committee's recommendation and defeat its resolution. But this possibility is never probable when a resolution has only been opposed by a few voices in committee. And if the opposition in committee has been numerous, its wishes are generally met there by revision of the wording under consideration. In short, the committee system enables the Assembly to circumvent some of the shortcomings of the unanimity rule most effectively. A resolution which has been adopted in committee by a vote of perhaps thirty-two to eight will probably be adopted unanimously by the Assembly in plenary session. On matters where the minority feels strongly, two or three States may abstain from voting in plenary session, which in no way hinders adoption of the resolution.

At the beginning of the resumption of plenary sessions by the Assembly its capacity as an electoral college comes into play. This function is illustrated each year in the election of three of the nine non-permanent members of the Council. Every nine years, as took place in 1921

and 1930, the Assembly also elects, simultaneously with the Council, the full panel of judges to the Permanent Court of International Justice, choosing them from among the nominations made by the so-called "national groups" of each country, which are generally the national groups of judges on the old Hague Court of Arbitration. Replacements on the panel of World Court judges are elected by the Assembly and Council simultaneously as the need arises.<sup>9</sup> It is also the prerogative of the Assembly to elect new members of the League, a procedure for which a two-thirds majority is necessary under Article 1(2) of the Covenant. The other elections carried out by the Assembly are based on the principle of the simple majority.

#### THE POWER OF AMENDMENT

In addition to deliberative and electoral functions, the former of which is subject to further classification into legislative, administrative, and judicial activities, the Assembly has an important constituent characteristic. Under Article 26 it is given the power to amend the Covenant, subject to ratification of amendments by a majority of the member States, including all those represented on the Council. It should be noted that the enlargement of the Council from the form originally designed has, therefore, unintentionally rendered more difficult the process of amendment. The Covenant does not specify procedure for proposing an amendment, but on this point the Assembly itself has decided that a three-fourths vote, including the votes of all the members of the Council, is necessary.<sup>10</sup>

The amendments ratified to date, italicized in the Covenant printed as Appendix A, show the strength of

<sup>9</sup> See *Statute of the Permanent Court of International Justice*, Articles 4-14.

<sup>10</sup> See p. 106 above. Compare also Schücking and Wehberg, *Die Satzung des Völkerbundes*, pp. 766 ff.

the tendency to resist tinkering with the Constitution of the League, which has shown itself sufficiently flexible to be adapted to purposes which few of its architects seem to have anticipated. In all, amendments have now been ratified with respect to Articles 4, 6, 12, 13, and 15. Of these additions to, or substitutions in, the original Covenant, only two have real constitutional significance, in both cases because of their extension of Assembly powers. One of these is Article 4(2 *bis*), in force on July 29, 1926, which empowers the Assembly to fix by a two-thirds majority the rules dealing with the election of non-permanent Council members. The other is Article 6(5), which empowers the Assembly to determine the allocation between the member States of the assessments necessary to meet League expenses. In force on August 13, 1924, this replaced the rigid formula of the original Covenant which apportioned expenses in accord with the system used by the Universal Postal Union.

Far-reaching amendments relating to the preamble and to Articles 12, 13, and 15, including the introduction of an important new paragraph to be known as 7 *bis* of Article 15, were brought before the Eleventh Assembly after lengthy study and a generally favorable report from a special committee of jurists.<sup>11</sup> These had the intention of closing the famous "gap" in Article 15(7) whereby the contingency of legal war under certain circumstances is still admitted, and, generally, of bringing the Covenant "into harmony with the Pact of Paris." Action on these proposed amendments was, however, deferred on the recommendation of the Assembly's First Committee. In 1931 the Twelfth Assembly, although re-affirming its "intention of continuing the task of inserting in the Covenant of the League of Nations a general prohibition of recourse to war," again postponed

<sup>11</sup> League Document A. 8. 1930. V.

definite action to harmonize the Covenant with the Pact. Its resolution to this effect is given on pages 585-86.

In view of subsequent events it is noteworthy that the principal objections to amendment of the Covenant for this purpose came from Japan. Mr. Nobumi Ito, representative of that country on the committee of jurists referred to above, attacked the move both from a juridical and a political standpoint. One of his points was that incorporation of the Pact in the Covenant would require an interpretation of the elusive phrase "war as an instrument of national policy."<sup>12</sup> It is therefore doubly significant that the Assembly in March 1932 should have declared that "full harmony" exists between the Pact of Paris and the principles of the Covenant, even though formal amendment to secure that harmonization had been deferred.

#### CHARACTERISTICS OF THE DELEGATIONS

According to Article 3(4) of the Covenant, each member of the League shall not have more than three representatives at meetings of the Assembly. The origin of this provision is found in the desire to prevent the Great Powers from outweighing those States able to send only small delegations. It is a provision with little meaning at the present time, for, aside from the head of the delegation, who is now frequently the prime minister or foreign minister of his country, the delegates, substitute delegates, and assistant delegates shade into each other without perceptible differences. There is a more real distinction between those delegates who are assigned to the Assembly committees, and those who are merely advisers to these. The head of the delegation and his colleagues with committee assignments generally sit together in that part of the hall which is reserved for

<sup>12</sup> Mr. Ito developed his arguments in detail in an article in *Revue Politique et Parlementaire*, July 10, 1930.

their national delegation. But it is not customary for a substitute delegate to address the Assembly unless serving as replacement for one of the three nominal principals. The development of a representation far larger than is strictly authorized by the Covenant is, however, of no great importance since each delegation is, as provided by Article 3 (4), limited to one vote.

In addition to the delegates named as such, an indefinite number of experts, observers, and secretaries may be attached to the delegation. At least eight States (Great Britain, France, Germany, Italy, Japan, China, Poland, and Spain) now habitually send a delegation of twenty or more, while the British and French delegations have often numbered as many as forty persons each. Among the Scandinavian countries, Great Britain, some of the dominions, and two or three other States, it has been the practise to include a woman among the six principal delegates. At the Eleventh Assembly Countess Apponyi (Hungary) was elected chairman of the Fifth (Social Questions) Committee.

While the composition of a delegation is a matter for each member State to determine, the custom is that it should always be controlled by, and generally largely composed of, representatives of the government in power. There are exceptions to the practise of political uniformity in composition. At several Assembly sessions Viscount Cecil, although a Conservative in politics, sat as a delegate of the British Labor government. Rudolf Breitscheid, the well-known German Social Democrat, was a member of the German delegation in years when his party was not represented in the government. The same was for a time true of the French Socialist deputy, Joseph Paul-Boncour, who on the death of M. Briand became the leading French representative at Geneva.<sup>18</sup>

<sup>18</sup> At the end of 1928, however, M. Paul-Boncour temporarily resigned from participation in the work of French delegations at Geneva because of the withdrawal of his party from the government.

The growth of the tendency for Assembly delegations to be primarily governmental in character is illustrated by the increasing number of prime ministers and foreign ministers who serve as heads of delegations. The following table illustrates this development during the first twelve ordinary Assembly sessions.

CABINET PARTICIPATION IN ASSEMBLY DELEGATIONS

Year	Number of States Represented	Number of Premiers or Foreign Ministers Heading Delegations	Percentage of Delegations Headed by Premiers or Foreign Ministers
1920 .....	47	6	12.8
1921 .....	45	8	17.8
1922 .....	48	9	18.8
1923 .....	50	6	12.0
1924 .....	51	22	43.1
1925 .....	50	17	34.0
1926 .....	49	18	36.7
1927 .....	49	22	44.9
1928 .....	50	22	44.0
1929 .....	53	26	49.1
1930 .....	52	26	50.0
1931 .....	52	24	46.2

On the other hand, as the work of the League has steadily expanded in various technical fields, the national delegations have come to include not merely numerous civil servants of their respective countries but also non-bureaucratic spokesmen of various social interests. Thus at the Twelfth Assembly were found among the various delegations such diverse national leaders as the head of the French Federation of Labor and the director-general of the Finnish Federation of Agricultural Co-operatives. Non-political figures like Dr. Nansen and Professor Gilbert Murray have played highly influential roles in Assemblies of the past and the academic leader is by no means a rare figure in the Assembly hall. An interesting practise of the Netherlands government in recent years

has been the inclusion of a prominent native member of the government of the Dutch East Indies. As an Austrian delegate of many years' Assembly experience has pointed out, the ideal national representative is the one who can do most to obtain in his own country practical realization of the Assembly resolution.<sup>14</sup>

The part which the diversity of the composition of the Assembly is playing in its constitutional evolution can be realized by considering the validity of a prophecy—or warning—made by M. Hymans, of Belgium, at the ninth meeting of the Peace Conference Commission of the League of Nations, on February 13, 1919. He then expressed the belief that:

If a beginning is made of giving representation to social groups it will end up with an international parliament holding yearly meetings. Presently the custom would grow up of bringing all sorts of questions before the League of Nations, and in that way its scope of action would be too widely extended. Last of all, elections would take place and the international parliament would no longer bear any relation to the present conception of the Body of Delegates.<sup>15</sup>

Both before and during the Assembly period, meetings are held by the various national delegations to determine general policy and attitude on specific issues. Although a good deal of freedom is allowed to the individual delegate by some of the smaller Powers, the Assembly delegate whether on the floor of the House or in committee has less individual freedom than is enjoyed by the average party member in a national legislature. A result is that the national policy in a League Assembly is an accurate reflection of the policy of the party in power rather than that of national opinion as a whole. In this respect the Assembly provides a pronounced contrast with the annual

<sup>14</sup> Count Mensdorff-Pouilly-Dietrichstein, in an article in *Headway*, March 1929, Vol. XI, No. 3.

<sup>15</sup> *Minutes* (English) Preliminary Peace Conference, Commission on the League of Nations.

conference of the International Labor Organization with its tri-partite representation of governmental, employers', and workers' delegates. In the words of Professor Harold J. Laski, "it is invaluable," at the Labor Conference, "when the Japanese governmental delegate paints an idyllic picture of labor conditions in Japan to have his interpretation promptly denied by the representative of the Japanese workers."<sup>16</sup>

From the single viewpoint of conducting business expeditiously it is, however, perhaps as well that the Assembly does not need to reckon with strife within each delegation as well as strife between the delegations.

#### BLOCS IN THE ASSEMBLY

There is not merely unification of policy within each delegation, but also to a certain extent unification of policy between different delegations. The most compact of the Assembly blocs is that of the British Empire, which, whenever the Irish Free State does not decide to pursue an independent course, can be reasonably certain of swinging a total of seven votes for any measure or candidate which it may favor. From the viewpoint of organization the next most highly developed bloc is that of the Latin American States. Both of these blocs hold informal caucuses throughout the Assembly period. That of the Latin American delegations is sufficiently powerful to decide in advance, and without risk of reversal, which countries in that continent shall be elected to the non-permanent Council seats. Its political manoeuvring, however, extends much further than the Council elections and was very apparent during the election of the World Court bench at the Eleventh Assembly.<sup>17</sup> The

<sup>16</sup> *A Grammar of Politics*, p. 623.

<sup>17</sup> On July 19, 1930, the official representatives in Europe of twelve Latin American members of the League addressed a joint letter to the Secretary-General urging that:

"Since the Latin American States which are members of the League of Nations form nearly one-third of the total membership, our governments



principal organizer of the Latin American bloc has been Señor Aristides de Agüero y Bethancourt, Cuban minister at Berlin, long familiarly known in Secretariat circles as the "Great Elector."

A politically powerful grouping which has exercised great, though perhaps diminishing, influence since the First Assembly is that of France and the Little Entente. Since German entry that nation has generally acted in unison with Hungary and Austria, and of late years Italy has frequently joined this alignment. There is a clearly defined grouping for the prosecution of common interests among the Scandinavian countries, to which Holland sometimes attaches itself. Of more recent origin and less definite orientation are the attempted groupings of the Balkan States and the agricultural countries of Eastern Europe. In short, Assembly line-ups reflect accurately the shifting tides of European politics.

Some observers have professed to see in the bloc system the incipient beginnings of what could be called party organization in the Assembly. While this would as yet appear to be an exaggeration, even when all due allowance is made for the special form which party organization would take in an international parliament, it is certain that the bloc system has been growing in strength of organization during recent years. Already it tends to strengthen continuity between successive sessions of the Assembly and to influence elections, such as that of the President, which were at first entirely directed by the Secretariat. The development has been assisted by the tendency towards regionalism sponsored by the League

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consider that they should be represented on the Court in the same proportion as on the Council, and that of the fifteen members of the Court three should be nationals of Latin American countries. Maintenance of this proportion is particularly necessary in view of the probability of an increase in the near future in the number of American countries which are members of the League." (League Document C. 416. M. 186. 1930. V.) Three Latin American judges, as demanded by the bloc, were duly elected two months later.

since the time of the Locarno treaties. It is evident that the idea of European federal union partakes of the nature of a loose-knit but potentially very powerful bloc within the League and more particularly within the Assembly. And the present weakness of this idea is demonstrated by its inability to eliminate rival Assembly alignments within the body of European Powers.

#### TYPES OF ASSEMBLY RESOLUTIONS

It appears, therefore, that in many of the outward aspects and internal arrangements of the Assembly no inaccuracy is committed by comparing it with a unicameral legislature. But the parliamentary aspect of the Assembly is subject to two extremely important qualifications. One of these is found in the nature of Assembly resolutions. The other is exemplified by the unanimity rule.

The resolutions of the Assembly fall into five fairly well-defined groups, which are illustrated below by examples selected from the resolutions adopted by the Twelfth Assembly in 1931.

1. *The Resolution of Approval* gives a purely formal sanction to the manner in which some policy, previously initiated by the Assembly, is being carried out under the supervision of the appropriate League organ.

*Example:* "The Assembly, approving the recommendation of the Allocation Committee:

"Fixes at fourteen the number of units allocated to Mexico in the scale of apportionment of the League's expenditure."

2. *The Resolution of Guidance* expresses a clearly defined opinion on points which the Assembly feels should be emphasized in carrying out policies previously initiated.

*Example:* "The Assembly, recognising that the normal exchange of commodities between the nations is seriously ham-

pered by frequent changes in customs tariffs and, generally, by instability in commercial policy;

"Considering the statement made by the sub-committee of economic experts to the Commission of Enquiry for European Union to the effect that the increasing disparity of tariffs greatly complicates the task of maintaining stability in the monetary and credit system of the world:

"Earnestly hopes that every country will try to the utmost possible extent to avoid any such change in tariff or commercial policy as would tend to suspend commercial agreements or to increase the economic disequilibrium and further disturb the general balance of payments. It also recommends that such agreements, where they do not exist, should be concluded on as liberal a basis as possible."

3. *The Resolution of Request* conveys definite instructions to the Council for the completion of work prerequisite to the commencement of a policy already undertaken, or begun by this resolution.

*Example:* "The Assembly requests the Council to appoint a special committee to study the existing system of elections to the Council and to report to a future session of the Assembly on any reforms which may appear desirable."

4. *The Constitutional Resolution*, without necessarily going so far as to initiate an amendment to the Covenant under the procedure laid down in Article 26 thereof, may nevertheless prove of pronounced importance in affecting the constitutional development of the League.

*Example:* "The Assembly, taking note of the report approved by the First Committee (document A. 86. 1931. V):

"Re-affirms its intention of continuing the task of inserting in the Covenant of the League of Nations a general prohibition of recourse to war and the principle that the settlement of international disputes may only be sought by pacific methods;

"Decides to create a committee consisting of representatives of all the members of the League of Nations, which may meet during the Conference for the Reduction of Armaments for the purpose of seeking unanimous agreement on the bases

indicated in the report and of drawing up a final text which may be voted by the Assembly at its next session;

"Requests the Council to convene the committee for the date which it considers appropriate;

"Requests the Secretary-General to transmit the present resolution and the report to the members of the League of Nations, in order that, if they consider it necessary, they may send to the Council their views as to the lines on which they think agreement could be attained."

5. *The Legislative Resolution* formally inaugurates an international convention which, after signature and accession thereto, will become an integral part of the body of international law for States which have ratified this treaty.

*Example:* "The Assembly, convinced of the importance and urgency of regulating whaling by means of an international agreement prohibiting the taking or killing of certain kinds of whales which have become extremely rare and of making the fullest possible use of the animals the catching of which is still permitted;

"In view of the fact that the attached convention differs from that communicated to the members of the League and non-member States by Circular Letter No. 158, of July 3, 1930, only as regards certain minor points of drafting, and that no substantial changes have been introduced therein:

"Decides to open the said convention immediately for the signature of members of the League and non-member States, and expresses the hope that the largest possible number of States will accede thereto without delay."<sup>18</sup>

There is, of course, also a sharp line of distinction between resolutions pertaining to the organization of the League and those concerned with its powers. When Assembly resolutions refer to a matter of policy which must be implemented by the governments of the member States, they customarily "advise," "propose," and "recommend," but do not enjoin or command. The Assembly has no constitutional power of edict towards either mem-

<sup>18</sup> This convention was signed by the United States on Mar. 31, 1932.

bers or non-members of the League. This fact has been frequently emphasized. Translating the words of Schücking and Wehberg:

The League of Nations today appears merely as an organization of the governments belonging to the League, and for this reason not only the Council, but also the Assembly, has merely the character of a conference of diplomats. . . . In this condition, that both of the upper organs of the League consist of governmental representatives, lies a great weakness of the organization.<sup>19</sup>

#### PRESSURE TO SECURE RATIFICATIONS

So rapid has been the constitutional evolution of the League, however, that to this definition, made in 1924, certain reservations must now be added. In resolutions directed to the governments of League members there is now apparent a tendency to use a tone differing from that of mere recommendation. Probably the most illustrative example of this is found in the resolution of the Eleventh Assembly on the subject of delays in the ratification of international conventions concluded under the auspices of the League.

The subject, of course, is one which goes to the heart of the problem of the parliamentary powers of the Assembly. The international convention is international legislation, and if the Assembly can exercise on its members influence which is effective for the ratification of such conventions, there remains little doubt that it may legitimately be regarded as possessing the inner characteristics as well as the outer form of a parliamentary organ. On the other hand, the adoption or even the signature of conventions, without subsequent ratification by the governments of the member States, is equally definite evidence of the absence of any super-national power in the League.

<sup>19</sup> *Die Satzung des Völkerbundes*, p. 138.

As the result of a Danish proposal the Tenth Assembly, on September 24, 1929, adopted a resolution requesting the Council to establish, with the assistance of the Secretariat, "a committee to investigate" the reasons for the delays which still exist and the means by which the number of signatures, ratifications, or accessions given to the conventions [concluded under the auspices of the League] could be increased."<sup>20</sup>

This committee was duly appointed, sat under the chairmanship of M. Eric de Scavenius (Denmark), and on May 8, 1930 brought in its report.<sup>21</sup> It found that the position as regards the ratification of League conventions "is not discouraging." At the date of the report:

Out of 39 conventions, agreements and protocols, 26 have come into force; 552 ratifications have been deposited at the Secretariat in respect of these instruments, which have, in addition, received 553 signatures still unratified.

But the Scavenius Committee held that the various reasons for delays in ratification, which are carefully examined in its report, did not obviate the desirability of League action both to improve the technique of the preparation of conventions and the means of increasing the number of signatures and ratifications. This report, following normal procedure, was included in the agenda of the next (Eleventh) Assembly, which allocated it to the First Committee of the Assembly for examination and report.

The report of the First Committee, as presented by its *rapporteur* (M. Giannini of Italy) on October 3, 1930, is worthy of quotation for reasons other than its brevity. It said:

The First Committee, after examining the interesting report submitted by the committee set up to investigate the question of the ratification and signature of conventions concluded

<sup>20</sup> *Official Journal*, S. S. No. 74, October 1929, p. 17.

<sup>21</sup> League Document A. 10. 1930. V.

under the auspices of the League of Nations (Document A. 10. 1930. V), considers that the suggestions put forward by this committee merit approval. The Committee is, moreover, of opinion that the solution of the problem of ratification depends largely on the thorough preparation of conferences. *It is hardly possible to insist on the ratification of conventions* which, being neither well prepared nor satisfactory, do not merit ratification, or which it is very difficult to accept.<sup>22</sup>

Making every allowance for careless use of words on the part of the First Committee, which being entrusted with constitutional and legal questions should not be expected to err in the fundamentals of phraseology, it remains obvious that the italicized part of the text above is of pronounced significance. To say that it is "hardly possible to insist on the ratification" of ill-prepared conventions is at least indicative of a belief in the power of the Assembly "to insist" on the ratification of well-prepared conventions, and if the Assembly conceives itself to have that power of insistence it is well on the way to being something quite different from a "conference of diplomats."

With this report before it the Eleventh Assembly proceeded to adopt a resolution authorizing the Secretary-General (1) to request a statement of intention from all governments which have signed a general League convention, but failed to ratify it a year after the date at which the protocol of signature is closed; and (2) to request a statement of "its views with regard to the convention" from the government of any League member which has neither signed nor acceded to a convention within a period of five years from the date on which it became open for signature.<sup>23</sup> In the field of international legislation, in other words, the Assembly has shown itself able

<sup>22</sup> League Document A. 83. 1930. V. (Italics inserted.)

<sup>23</sup> For text of this resolution see *Official Journal*, S. S. No. 83, October 1930, pp. 12-15.

and willing to go rather further than mere recommendation to League members.<sup>24</sup>

#### THE UNANIMITY RULE

The second qualification which must be made in considering the Assembly as an international parliament is the factor of the unanimity rule. Even though an Assembly resolution need not necessarily be followed by action to make it efficacious in the various member States, it must be passed unanimously by the Assembly. The two qualifications together have frequently been cited as final evidence that the Assembly is not the legislative power of a super-State, however many parliamentary characteristics it may have acquired as a regularly recurring conference of the great majority of nations.

The unanimity rule was not specified in any of the original draft covenants, undoubtedly because the principle which it confirms was taken for granted. It was introduced on motion of Lord Robert Cecil at the eleventh meeting of the Peace Conference Commission on the League of Nations, in much the same wording as is now found in Article 5 (1) of the Covenant. In moving the amendment to incorporate the unanimity rule in the Covenant, Lord Robert Cecil referred to it as "merely a specific statement of a fundamental principle of the League." It was agreed to without opposition as being as applicable to the Council and to the Assembly as to any pre-war international conference.

The "fundamental principle" mentioned by Lord Robert Cecil is, of course, that of the protection of the

<sup>24</sup> The Commission on League of Nations Problems, of the Labor and Socialist International, decided, in August 1930, to inquire "whether it would not be desirable, at least in certain cases, to consider the ratification of signatures as obtained, in the absence of a notification by the States within a fixed period of their refusal to ratify." *Labor and Socialist International Pamphlet No. 2*, p. 5.



sovereignty of the members of the League.<sup>25</sup> It may be argued that a considerable alteration in the traditional doctrine of sovereignty has been made by the introduction of continuous co-operative international policy in many technical activities. The provision that no State shall be bound against its will by a decision taken through the League represents the seemingly irreducible minimum of the doctrine of national sovereignty. As we shall see, this minimum has been perceptibly pared down by League procedure. The form of complete national sovereignty within the League is preserved but in practise the doctrine is subject to very considerable concessions.

The objections to the unanimity rule from the viewpoint of governmental accomplishment are obvious. Professor Laski has said on the subject that "it is elementary in the history of States that a demand for unanimous consent is fatal to effective government. . . . Even a requirement like the two-thirds rule of the American Senate has, on occasion, been fatal to decisive action at points where decisive action was sorely wanted."<sup>26</sup> It is, however, a no less elementary fact in the history of international organization that effective international action is not going to be secured without a genuine conviction of its desirability on the part of all the co-operating States. While many criticisms have been brought against the practise of unanimous consent, both in the Council and in the Assembly, there is little prospect of any serious movement arising to secure its complete elimination.

#### EXCEPTIONS TO THE UNANIMITY RULE

The effect of the unanimity rule, however, is being steadily whittled away, simply because its rigid interpre-

<sup>25</sup> Compare Jean Ray, *Commentaire du Pacte de la Société des Nations*, pp. 222-23.

<sup>26</sup> *A Grammar of Politics*, p. 627.

tation would be fatal to concrete accomplishment. Certain exceptions are provided by the Covenant. Other instances where a majority vote has been substituted for the strict unanimity rule have already been noted.<sup>27</sup> The basic factor of modification in the case of the Assembly is found in its budgetary responsibilities. It is obviously essential for the existence of the League that no single State, nor even a small minority of States, should be permitted to block the adoption of budgetary estimates approved by the great majority. Primarily to prevent this difficulty the procedure of adoption of resolutions by majority vote has been developed in the committees, spreading from that entrusted with League finance to all the others.

Another device, already referred to, for circumventing the unanimity rule is the practise of counting abstentions as not present. This enables the delegation of a single State to enter a formal protest against any resolution approved by the majority, but does not in any way prevent the passage of the resolution. An interesting development of this device is its utilization to express protest against the ineffectiveness of a resolution as much as to express a fear that the resolution may go too far.

A third derogation of the principle of strict unanimity is the practise of regarding a convention as universally acceptable after it has received a limited number of ratifications. Of course no State which has not ratified is bound by such a convention, but none the less it is adopted into the general body of international law as soon as effective between the parties thereto, with consequent indirect influence on those governments which have not ratified.

A device peculiar to the Assembly in circumventing the unanimity rule is the line of demarcation which that

<sup>27</sup> There were several such instances during the course of the Sino-Japanese controversy.

body draws between resolutions and recommendations. The practical difference between these classes may be extremely small and there have been cases in which a resolution has been turned into a recommendation, without any alteration of text, in order that it might secure adoption without the necessity of unanimous approval.<sup>28</sup>

Yet another method of getting around the unanimity rule, and the one most frequently utilized, is by concessions from the various parties involved, made expressly to secure a uniformly adoptable text. Such concessions not infrequently result in a scaling up, as well as a scaling down, process so far as the effectiveness of the proposed action is concerned. But it must be admitted, as was noted by a delegate at the Fourth Assembly, that concessions sometimes secure unanimity "only by taking refuge in vague formulæ the indefinite nature of which leaves everyone free to reserve various interpretations for the future."<sup>29</sup>

Americans who are familiar with the restrictions on pure majority rule in the United States Congress, such as the two-thirds rule binding on the Senate where the ratification of a treaty is concerned and the continuous prospect that any legislation approved by both Houses may be declared unconstitutional by the Supreme Court, will hesitate to deny a parliamentary character to the Assembly merely because of a unanimity rule, which in practise is so subject to circumvention. Though authority is not expressly delegated to the League Assembly by any direct electoral process, there is an indirect popular mandate in the fact that the Assembly is controlled by governmental spokesmen who are in varying degrees responsible to the will of their respective peoples. In this connection should be noted the practise of various League of Nations associations in establishing as a criterion of

<sup>28</sup> Compare Ray, p. 229.

<sup>29</sup> Fourth Assembly session, plenary meetings, p. 53.

national election the loyalty of a candidate, regardless of his party, to League policies and ideals. Nor was it ever argued that indirect election made the United States Senate less parliamentary in its characteristics.

There are more checks on the legislative actions of the Assembly than will be found in most national parliaments, but it is none the less true that the Assembly is continually trespassing on the complete independence of League members in order to push them in many lines towards the common policy of a confederation of States. There can be little criticism of the essential justice of the definition by Mr. Noel Baker who sees the Assembly as

... quite fairly, an international parliament. For an international parliament it is, a parliament which for its own purposes works quite as well and smoothly as other parliaments, which like other parliaments is by turns exciting and dull, but which, whether exciting or dull, provides the great driving force of all the new machinery of the League.<sup>30</sup>

#### THE EXTERNAL COMPETENCE OF THE ASSEMBLY

In the preceding chapters the question of the competence of the Assembly with regard to the other central organs of the League has been examined, with the general conclusion that the representative chamber is steadily tending to establish itself as the sovereign organ of the association. There remains for inquiry the issue of the Assembly's external competence. In theory this may be said to be unlimited for both the Assembly and the Council, since Articles 3(3) and 4(4) of the Covenant invest these organs respectively with the identical right to "deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world."

The wording, obviously, indicates that it is within the competence of the Assembly (or Council) to take under

<sup>30</sup> *The League of Nations at Work*, p. 18.

consideration matters which cannot be regarded as "affecting the peace of the world." And such interpretation is strengthened by the preamble of the Covenant, which establishes the promotion of "international co-operation" as the first-named of League objectives. However, no authoritative definition of what can be considered as lying within or without the "sphere of action of the League" has ever been made.

A serious attempt to do so occurred during the Seventh Assembly, when the British delegation presented a carefully prepared memorandum asserting that "to fall within the province of the League, a political question must be international in the sense of being a potential source of quarrel."<sup>81</sup> Together with this memorandum the British proposed the appointment by the Council of a committee "to consider and report what questions are and what are not within the sphere of action of the League within the meaning of the preamble and Articles 3 and 4 of the Covenant." It was, however, pointed out that under any restrictive definition of these articles much of the financial, social, and humanitarian work then well established by the League might have been held unconstitutional. In consequence, the British resolution was postponed until the next session of the Assembly, was then conveniently forgotten, and has not been revived since.

In theory, therefore, the external competence of the Assembly remains, as defined in the Covenant, practically unlimited. In practise, however, it is subject to the restriction which the unanimity rule, even in its modified form, implies. If a single member State feels strongly that it is inadvisable for the Assembly to indorse a new undertaking, or to bring a new field of operation under League supervision, it can always endeavor to block such

<sup>81</sup> For the text of this memorandum see *Official Journal*, S. S. No. 45, pp. 43-45.

development. For restrictive purposes this is probably more efficacious, and far less subject to unexpected difficulties, than any written interpretation of the "sphere of the League" could hope to be.

It is obvious, however, that the tendency of the League is set in the direction of regarding as within the sphere of its organs any issue on which a reasonable proportion of international public opinion has become insistent. And it is just because the Assembly so well focuses the opinion of the world community that this body has assumed leadership in extending the League's field of activity within the broad permissive wording of the Covenant. Liberian resentment did not keep the League from inaugurating a searching inquiry into conditions of alleged slavery and forced labor in that country, even though the issue would not seem to affect directly the maintenance of world peace. In cases where the preservation of peace is evidently involved, as in Japanese policy in Manchuria, the Assembly has shown itself willing to override a Great Power which sought to deny its competence. The unanimity rule has not been able to prevent the League from asserting a right of control in matters which a generation ago would have been regarded as clearly immune from any international jurisdiction. This development would not have been so pronounced were the Assembly nothing more than a periodic conference of diplomats.

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## CHAPTER XVI

### THE THEORY OF THE LEAGUE

Of all the preliminary conceptions which must be regarded as having contributed to the formation of the League of Nations, perhaps the most notable for shrewd political insight is that outlined by Immanuel Kant at the close of the eighteenth century. In his essay on *Perpetual Peace*, written in 1795, Kant singled out the fundamental theory of the League as we see it operating today. It was the achievement of this philosopher, a generation before the Treaty of Vienna, clearly to define that prerequisite of international organization which all humanity, in the generation after the Treaty of Versailles, is called upon to admit or to reject:

Every State, for the sake of its own security, may—and ought to—demand that its neighbor should submit itself to conditions similar to those of the civil society where the right of every individual is guaranteed. This would give rise to a federation of nations which, however, would not have to be a State of nations.<sup>1</sup>

A little later in this essay Kant maintains that a State of nations (*civitas gentium*) is the ideal form of international association. But he realizes that this super-State ideal is not in accordance with the principle of national sovereignty, so that States

... reject *in hypothesis* what is correct *in thesis*. Hence, instead of the positive idea of a world-republic, if all is not to be lost, ... a federation averting war, maintaining its ground and ever extending over the world, may stop the current of this tendency to war and shrinking from the control of law. But even then there will be a constant danger that this propensity may break out.<sup>2</sup>

<sup>1</sup> Campbell Smith's translation, pp. 128–29.

<sup>2</sup> The same, p. 136.

A century and a quarter elapsed between the writing of the essay on *Perpetual Peace* and the launching of the League of Nations. And in this period forces with which Kant was familiar only in rudimentary form grew to maturity. The spirit of nationalism in this day of democratic institutions and universal "patriotic" education is far more potent than that which Kant recognized as fatal to the super-State principle. On the other hand, the development of economic organization, stimulated by the applications of scientific discovery, has made human society steadily more unified contemporaneously with the growth of an unbridled nationalism. From the consequent lack of balance arises a situation where there is nothing unduly imaginative in Kant's suggestion that "all will be lost" without a practical association of the sovereign political units of the world. It is clear, however, that such association, based on existing forms of statehood, would be more effective if nationalism were everywhere firmly established as a basis of inter-State co-operation. The Japanese attempt to deny to China the prerogatives of League membership was based on the not unreasonable assumption that nations cannot effectively co-operate for their mutual benefit unless they have first reached an effective stage of nationhood.<sup>8</sup>

#### THE LEAGUE A CONFEDERATION

Although Kant foresaw a federation of nations as the minimum effective form of international association, the present League is not to be defined as such; far less, of course, as the super-State which the philosopher of Königsberg regarded as the ideal. The League today is not a federation but a confederation of independent nations, though allowing for the less precise political nomenclature of the eighteenth century it is probable that it was what we call a confederation which Kant had

<sup>8</sup> Compare pp. 492-93 above.



in mind. Such statements as "without a compact between the nations the condition of peace cannot be established or assured" indicate that it is the present-day meaning of confederation which he intended to convey.

The essential difference between a confederation and a federation lies in the fact that the former is not a State, either in law or in the psychological attitude of its free members towards the organization.<sup>4</sup> Without laboring the point, it may be pointed out that the right of denunciation is expressly stipulated by Article 1(3) of the League Covenant. Such a right would be out of place in a federal union. That issue may be said to have been settled by the Civil War in the United States, in spite of the efforts of John C. Calhoun and other Southern statesmen to prove "that a State, as a party to the constitutional compact, has the right to secede—acting in the same capacity in which it ratified the Constitution—cannot, with any show of reason, be denied by anyone who regards the Constitution as a compact . . . where the parties to it are sovereign; and, of course, have no higher authority to which to appeal."<sup>5</sup>

Far more effective were the arguments logically derived from the nature of the Constitution of the United States by Webster, Lincoln, and other leading opponents of the right of secession. As they pointed out, "the Constitution does not by express provision or by implication, provide any method by which a State may withdraw from the Union; no such dissolution of the federation was contemplated by the men who drafted and ratified the covenant. The government established by it operates directly on the people, not on States; it is the government of the people, not of States."<sup>6</sup>

<sup>4</sup> Compare Robert Redslob, *Théorie de la Société des Nations*, pp. 24 ff.; also Schücking and Wehberg, *Die Satzung des Völkerbundes* (2d ed.), pp. 103 ff.

<sup>5</sup> *The Works of John C. Calhoun*, edited by Richard K. Cralle, 1854, Vol. I, p. 301.

<sup>6</sup> Charles A. and Mary R. Beard, *The Rise of American Civilization*, Vol. II, p. 49.

The lesson of the American Civil War was, in fact, in the minds of those who framed the Covenant of the League.<sup>7</sup> There was no serious attempt to have the League derive its legal powers from the people of the member States, nor to make its machinery operate directly upon them. On the contrary, it was to affirm the sovereignty of the members that Article 1(3) was inserted.

The British Foreign Office "Commentary on the Covenant of the League of Nations," published immediately after its adoption by the Peace Conference, predicted that "the concession of the right of withdrawal will, in fact, remove all likelihood of a wish for it, but frees States from any sense of constraint." The resignations, for special reasons, of Costa Rica and Brazil do not entirely reject the logic of this reasoning. The privileges of League membership, moreover, have proved a cogent factor against hasty withdrawal at the instigation of an inflamed nationalism. In spite of strong propaganda in Japan for resignation because of League pressure in the Sino-Japanese dispute the step has not been taken. Withdrawal by Japan would lose that country its right to act as mandatory power for the Caroline, Marianne, and Marshall Islands in the Pacific.

#### STATE SOVEREIGNTY AND THE LEAGUE

An essential characteristic of a confederation, when it is not allowed to slip over the line of demarcation which separates it from a federal union, is the rigorous preservation of the independence of its member States. The extent to which the thirteen original American colonies preserved their independent governmental controls during the period of the Articles of Confederation needs scarcely be recalled. As James Madison complained: "Some of the States, as Connecticut, taxed imports as

<sup>7</sup> Compare *Minutes* (French) Preliminary Peace Conference, Commission on the League of Nations, thirteenth meeting.

from Massts. higher than imports even from G.[reat] B.[ritain]. . . ."<sup>8</sup>

Even in subjects where co-operation was most needed, such as the defense of the several States from external aggression, it was slowly and over pronounced opposition that rights were yielded to the Federal Union which came into formal existence with the ratification of the Constitution, by the requisite nine states, in 1788. As late as 1793—seventeen years after the declaration of the independence of the United States—it was considered entirely appropriate that the Maryland legislature should grant authority to the federal government in the following condescending terms:

Whereas the United States may think it necessary to erect a fort, arsenal or other military works or buildings on Whetstone Point for the public defense, therefore, resolved, that upon the application of the President of the United States to the Governor for permission to erect a fort, arsenal or other military works on the said Point for the purpose aforesaid, the Governor shall and may grant the same, with the consent of the owner of the soil.<sup>9</sup>

It would be interesting to compare this legislation on the part of a member State towards the federation of which it had just become a part with that whereby the Swiss government has now permitted the League of Nations to erect its own wireless station on Swiss soil.<sup>10</sup> The comparison might encourage the conclusion, for which other indications are not lacking, that the League of Nations is already crossing the threshold of develop-

<sup>8</sup> Quoted by James Brown Scott, *James Madison's Notes of Debates in the Federal Convention of 1787 and Their Relation to a More Perfect Society of Nations*, p. 15.

<sup>9</sup> As a result of this resolution Fort McHenry, scene of the writing of "The Star Spangled Banner," later came into being.

<sup>10</sup> After preliminary negotiations extending over several years this station, with extra-territorial rights against censorship and powerful enough to flash 250 words a minute to any part of the globe, began operations on Feb. 2, 1932. It proved of distinct utility as an agency of communication during the later stages of the Sino-Japanese dispute.

ment as a super-State. There is no doubt that while State sovereignty in a confederation may at first be surrendered lightly to the weak central authority, the latter is in time apt to assume as of right what was at first relinquished in condescension. But more important, at the present stage of League evolution, is consideration of the seemingly opposite thesis that the League confederation, rather than limiting the sovereignty of its members, is tending to increase that characteristic in their behalf. It may well be that in following this procedure the League of Nations will preserve its loose confederate character indefinitely, even though the lesson of history is that confederations either develop into federal units or cease to exist.

In every country extension of State services rather than extension of State power is a characteristic of modern administrative methods. "Indeed, if administration and not the statement of law or treaties were made the basis of the discussion, the old problem of sovereignty would appear in an entirely new light, for then the advance of international organization would *not* appear to be a limitation of sovereignty."<sup>11</sup>

Of course the extension of services may, and frequently does, involve the extension of power, but as a condition or a consequence rather than as an objective. Nor is it possible to assert that there is something unavoidable in enlargement of the central authority *pari passu* with increase in its social activities. The extension of central power—the metamorphosis of confederacies to federations—has been primarily a matter of defensive action against external forces, whether political or economic. Where the political structure is not subject to serious external threat, or where the geographic obstacles to unification are stronger than the need for economic solidarity, there may be a centrifugal rather than a centri-

<sup>11</sup> C. Delisle Burns, "International Administration," *British Year Book of International Law*, 1926, p. 56.

petal tendency. The post-war development of the British Empire is a case in point. As a political organism the League is in no danger of attack from States which stand outside its structure. Nor is there any traditionally unifying principle applicable to all its members. It would be extremely far-fetched, therefore, to suppose that super-State tendencies in the League will necessarily become triumphant at any time in the predictable future.

The solid basis of League technique in the field of international administration, and the fundamental reason for its success in that field, has been the method of working through international groups in an effort to consolidate services heretofore organized on a national basis. The theory behind this idea—that the world has in fact now become a single community—seeks to replace the principle, so clearly demonstrated in the record of imperialism, that an extension of national services warrants an extension of national power. And already we can see that League theory tends to go further than a strictly international approach, if internationalism is regarded as nothing more than the sum of contributing nationalisms. The League technique involves collectivizing parts of the administrations of the co-operating nations, as was explained in Chapter VII. But it also involves forwarding joint action by functionally responsible though unofficial groups in the co-operating nations to substitute a world outlook which is not limited by national frontiers even though it must be built on national organization.

Since League administrative theory is based on the fact that the services of a government are much more adequate when supplemented by the similar services of other governments, it follows that the machinery which the League is building should be regarded as promising an extension of national controls rather than as threatening a contraction of national power. In this light, the com-

plex constitutional development of the League, which at bottom is only the organization of those international contacts made inevitable by modern civilization, acquires a deeper significance. The development of the central organs of the League has been slow or rapid, disappointing or remarkable, according to the extent to which they have subordinated nationalistic concepts to a world outlook. Thus the Council, essentially a narrowly international conference, has made less contribution to political theory than has the Secretariat. The latter organ, which has to co-ordinate all the broadly international work of the League, has in the process acquired certain unique characteristics. To quote Professor Burns again:

The executives of the League and the Labor Organization, being very different from pre-war international commissions and conferences, require a different type of administration. The executives are responsible ministers, not specialists, as in the case, for example, of the Danube Commission. The Secretariat, therefore, is more extensive and of a more "responsible" type. They rank with the highest officials in the national administrations.<sup>12</sup>

#### THE EXTENSION OF TECHNICAL SERVICES

The rapid organic development of the League—in itself probably a symptom of health and vitality—does not stop short with the central mechanism of Secretariat and Technical Committees, Council, and Assembly, as detailed in earlier chapters. The International Labor Organization, founded perhaps on too grandiose a scale because of the feeling that it would prove a counter-attraction to Bolshevism in the workers' minds, has now settled down as an important, though secondary, technical and humanitarian arm of the League. The Permanent Court of International Justice is closely linked with Geneva as the League's judicial arm. Before the Bank for International Settlements was organized, pressure to bring it under the

<sup>12</sup> The same, p. 63.

League ægis was apparent. During 1930, steps to make the International Institute of Agriculture, at Rome, a League organ were taken. With the tacit approval of the United States and Russia all inter-governmental action for reduction of armaments has now been centered in the League's machinery. In short all organized effort to extend national controls in the international field is made with an eye to the demonstrated capacities of Geneva. Since this development is one which goes beyond purely inter-governmental action it is logical that League technique should take into consideration forms of co-operation of an unofficial type.

Evolution has thus brought about a League of Nations which is a natural outgrowth of, yet very different from, that sketched in Paris during the days when the Allied representatives sought a workable compromise between the ideal of an organized world community and an organization which should serve to stereotype the war-time settlements. The latter aspect of the League is fading and the former is gaining ground. As the fog of ignorance and suspicion passes away, civilization sees a patient, tireless, and unspectacular machinery working away to secure peace by the development of co-operative agencies for the mutual benefit of all, with no infringement on the legitimate rights of any. Successes in this line are not of the type to create newspaper headlines, but perhaps they are none the less vital for that. And more and more there are revealing indications that along with its daily grind the League is bringing a new outlook upon world politics. The remainder of the Versailles Treaty no longer dominates the League Covenant and in the Assembly it has been asserted without open protest that the time is drawing near for that body to exercise its authority under Article 19, providing for reconsideration of "inapplicable treaties."

It will, however, take time for the world in general to understand the work of the League in its proper pro-

portions. And this is not merely because the theory of the world community which underlies it is something new in human history, untaught in schools and alien to the thought-processes of most of adult humanity. Aside from the universal difficulty of grasping a novel idea there is the factor of the unwillingness of the League's technicians to emphasize the potential importance of the work on which they are engaged, or even to discuss their activities in understandable generalities. When the Post Office Department in the United States decided to start a transcontinental air-mail service the whole country was promptly informed of the development and its significance embroidered in the terms of that national pride which is none the less deep rooted in human psychology because historically a superficial emotion. But when the Communications and Transit Organization of the League completed its preparatory work for the unification of the buoyage and lighting of coasts, a development of obvious importance in the improvement of international communications and the forwarding of maritime security, the public as a whole did not realize that the League had been working on the subject at all. Certainly very few Americans knew that a vice-admiral of their Navy had actively co-operated in the task.

The channels taken by publicity follow the line of least resistance. The League was at first universally regarded as a political organism, and it was its political possibilities that everybody—both proponents and opponents—at first wanted to discuss. Those who studied the Covenant and formed their opinions therefrom in the early days, paid little attention to Article 23, close to the end of the League's Constitution, from which most of its technical work has sprung. Yet Article 23 has, in fact, proved of greater practical import than Article 10 or 16, or any of the other controversial clauses which were so vehemently discussed in 1919. The Technical Organiza-



tions, moreover, got slowly under way. Those in charge of them were rightly averse to premature publicity. And even if this had not been the case much of this important work would have been hard to advertise, for while most newspaper readers consider themselves authorities on politics, few have either the desire or the ability to come to grips with technical issues.<sup>18</sup> In consequence, it has been within quite recent time, if it is even as yet true, that any considerable proportion of public opinion has begun to realize that the non-political work is the most substantial, enduring, and important part of the League's activities.

#### RECOGNITION OF GROUP INTERDEPENDENCE

The second of the Articles of Confederation, as adopted in 1777, stoutly asserted that in the confederacy to be known as the United States of America, "Each State retains its sovereignty, freedom and independence." The issue of State sovereignty in America was then no more academic than is the issue of national sovereignty in the world today. But the issue in the United States has greatly lessened, after a century of dispute and a civil war, not because of the infringement of State sovereignties, which are or should be maintained in all matters of

<sup>18</sup> The point is brought out from a different approach by Harold J. Laski, in *A Grammar of Politics*, p. 619: "I emphasize the importance of contact outside the Foreign Offices of State. I believe it is of real urgency in building up such a method of international administration to multiply the sources of contact between States. The more we can localize action, the more it can be dealt with in terms, not of prestige, but of technique, the greater is the opportunity for the growth of technique. . . . Technique keeps the trivial in its right perspective. If a Foreign Office is brought in to grapple with a dispute about railways, almost inevitably a hinterland of discussion beyond railways begins to pervade the atmosphere. And to keep discussion technical has the great additional advantage of keeping it undramatic. It cannot easily be made a journalistic sensation. It cannot be surrounded with that miasma of report and scandal which have poisoned so many international conferences in the last few years. It makes the notion of a triumph much less accessible when, a priori, the nature of the triumph is not intelligible enough to be news."

strictly local concern, but because of the merger of State sovereignties in that of a larger national community wherever larger national interests are involved. With the lesson of solidarity taught to the world community by the aftermath of its civil war of 1914-18 there is nothing fanciful in the anticipation that national sovereignties will in future be increasingly co-ordinated by a central organization seeking not to override the rights of any participating member, but to strengthen those rights by harmonizing them in common constructive purposes.

That this can and must be done is the theory on which the League is operating. The technique through which that theory is applied has been the subject of this study. But now that our survey is completed it remains necessary not only to bring the threads together but also to discern the preliminary tracings which point to a probable future development of great importance. The League is very inadequately defined by calling it a confederation of nations unless we simultaneously consider its tendency to further world-wide functional association side by side with inter-State political co-operation.

Of a certainty we are in 1932 much nearer the beginning than the end of the development of functional co-operation under the League ægis. The decision of the Economic Committee, in the spring of this year, to organize an investigation by producers into the situation of the automobile industry throughout the world is but one instance of a trend in League technique which has not as yet received the attention which it merits. The far-sighted principles sketched by Sir Arthur Salter in 1921, and reviewed in an earlier chapter, must be supplemented to account for the growing activity of the League as a co-ordinator of unofficial as well as official co-operation.<sup>14</sup>

<sup>14</sup> *Allied Shipping Control*, Part V. The rapidity of development in the theory of regularized international co-operation is well brought out by comparing this study of the immediate post-war period with the same

There can be no criticism of the argument that over-centralization brings dangers in international as in national administration; that the principle of direct contact between specialists with executive authority is essential to international work requiring the continuous co-operation of national administrations; and that this principle "replaces centralization by co-ordination."<sup>15</sup> But the earlier emphasis on the essential nature of co-operation between those "with executive authority" is being broadened as we come to realize the true political significance of those extra-governmental organizations which sometimes wield more executive authority, direct or indirect, than does officialdom. From the basis of rapid communication to the apex of intellectual kinship the world is already not merely more international but also far more definitely unified than its archaic political organization would indicate. At a time when neither scientific, business, nor labor organizations think twice about hurdling national frontiers at which governments must, from their nature, pause, there is an evident inadequacy in Professor Laski's definition of "the vital principle of international organization that governments should deliberately and continuously negotiate upon the joint settlement of large economic issues."<sup>16</sup>

Starting with the premise of the interdependence of nations, the League within its first decade advanced to a natural amplification of that premise: the interdependence of the groups which nations bind and often arbitrarily limit. The effect of this development on the technique of international co-operation can be simply put, in spite of the magnitude of the implications involved.

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author's book, *Recovery: The Second Effort* (1932). In the latter, Sir Arthur emphasizes (p. 251) that "government is everywhere now proving inadequate to the tasks which it has assumed."

<sup>15</sup> The same, p. 254.

<sup>16</sup> *A Grammar of Politics*, p. 618.

Instead of merely operating through inter-governmental committees, bringing all important aspects of bureaucracy in the various co-operating nations into contact, the League has also come to create and utilize international functional committees, where the criterion of membership is not the official position of national representatives, but the national and international influence of acknowledged leaders in the line of work under consideration. The practical desirability of this trend needs no emphasis. On a committee concerned with a specific industrial problem, for instance, the representation of spokesmen of international trade unions may be a more fundamental need than the membership of officials from the national labor departments.<sup>17</sup> And on a committee working on a detailed financial issue, the assistance of experienced international bankers may be a necessary preliminary to the participation of Treasury Department representatives. Officialdom is always circumscribed by political frontiers which have far less meaning for finance, commerce, industry, science, and the arts.

The League's recognition of the importance of group, as well as national, interdependence, is reflected by the table in Appendix B. The principal advisory committees named there are for the most part official in personnel, as shown by the membership of the Economic Committee, given on page 247. But the highly specialized subcommittees, listed as 1 (a), 1 (b), and so on in the Appendix, are to a large extent functional in composition. As an example, the Maritime Navigation Committee, one of the permanent bodies subject to call by the Advisory Committee for Communications and Transit, is composed of leading representatives of the shipping interests in the principal maritime nations.

<sup>17</sup> In this connection see the chapter of summarization called "Horizons Ahead" in Lewis L. Lorwin's study on *Labor and Internationalism*.

## THE WORLD ECONOMIC CONFERENCE

The League's acceptance of the principle of unofficial functional representation has to some extent existed from the beginning. The Financial Committee, for instance, has throughout been a largely professional body including private bankers and financiers. This tentative early practise was greatly reinforced by the World Economic Conference held at Geneva in May 1927, which was representative not merely of fifty governments but also of industrial, commercial, trade union, agricultural, financial, and other functional groups. In urging its convocation League spokesmen made clear that there is small hope of constructive agreement among national officials if between them lie alarming shadows cast by the bitter commercial rivalry of producing groups in their respective countries.

While the report of the Economic Conference of 1927<sup>18</sup> may not unfairly be called a Magna Charta for international commercial co-operation, we are here concerned only with its effect in contributing to the development of the theory of international administration. The three major commissions of the Conference—on commerce, on industry, and on agriculture—brought in conclusions of momentous importance.

The first-named agreed that the imposition of customs barriers is no longer to be regarded as a matter of purely domestic concern, and unanimously declared: "that the time has come to put an end to the increase in tariffs and to move in the opposite direction." The committee on industry, where the division of interest was not national, but between the representatives of capital and labor,<sup>19</sup> acknowledged the importance of safeguarded

<sup>18</sup> League Document C. E. I. 44 (1). 1927.

<sup>19</sup> Commenting on this division an official League publication—*Ten Years of World Co-operation*—observes that: "The fact that the horizontal and vertical grouping could take place in adjoining rooms at the same conference is a striking testimony to the catholicity of the League's methods" (p. 198).

international industrial agreements for the promotion of general commercial interests in certain industries. And the committee on agriculture, after declaring the essential interdependence of agriculture, industry, and commerce, advocated, among other steps, the development of farmers' co-operatives and improved organization of credit institutions, together with consideration of whether it is desirable to increase the amount of agricultural credits by international organization. All branches of the Conference, in other words, stressed an intensification of international co-operation, as the *sine qua non* of continued industrial progress.

But far more important than any of the resolutions passed was the realization, emphasized by the deliberations of the Economic Conference, that the tasks involved called for much more than governmental activities. Prior to May 1927, the dominant League technique had followed the lines of inter-governmental co-operation. This was a theory of international relations which went far beyond the old idea that sovereign States should have official contact only through the medium of their respective foreign offices. Yet it was a theory none the less firmly rooted in that prevailing European belief in *Étatism* which in the past had helped to give these foreign offices such undue power. The governments of Europe were proceeding on the belief that the economic problems of peace could be solved, as were those of war, if only there were sufficient co-ordination between the various national bureaucracies.<sup>20</sup> The strong American

<sup>20</sup> Compare Laski, p. 618: "It is possible, I have urged, for governments to co-operate in settling large economic questions. That settlement will probably be best effected, not by an executive body, but by the co-ordinated consultation of those in the separate States who are responsible for the political action involved. In general, it is best that such consultation should take place, not, as in the older diplomacy, through the medium of foreign offices, but through direct connection between the specialized departments. The British Board of Trade should deal directly with the French Ministry of Commerce; the Italian Minister of Agriculture should concert measures with the German Minister of Agriculture. Direct connec-

delegation to the Economic Conference, on the other hand, was at that time of high prosperity in general hostile to the European idea that business should be the subordinate of bureaucracy. When the Conference closed its sessions it left a more general realization that co-operation between governments alone would be insufficient to achieve the aims laid down, that continuous contact between the organizations of industry, commerce, and finance, is an equal necessity for the development of successful international action, and that the economic organization of the League might profitably be revised in order to insure the assistance of this essential, extra-governmental co-operation.

#### THE ECONOMIC CONSULTATIVE COMMITTEE

Accordingly, on September 24, 1927, the Eighth Assembly adopted a resolution increasing the powers of the Economic Committee and establishing the Economic Consultative Committee which definitely brought the factor of functional, as distinct from governmental, representation into the League's scheme of international administration. Because of its constitutional importance most of this lengthy resolution deserves quotation:

Whereas, in addition to the economic tasks hitherto undertaken by the League, much important and extensive work will result from the recommendations of the Economic Conference;

*Whereas it is essential that the different interests and organizations which collaborated in the preparation of the Conference should continue to give their support and advice in the work of securing effect to its recommendations;*

. . . . .  
The Assembly considers:

a) That the Economic Committee should continue to be, as at present, the organ through which the Council deals with

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tion entails permanent institutions of contact. It is not enough to have occasional meetings of heads of departments. . . ." Nor is it enough to have merely bureaucratic contacts. Permanent institutions of contact between producers, traders, and technicians are as important as those between officials.

economic affairs and that it should be constituted—under such rules as the Council may consider appropriate for its effective functioning—so as to be best suited for its principal work, which in the near future at least, will lie within the sphere of the economic relations between States and their economic policies so far as they have international aspects. It should consist of not more than fifteen members.

b) That the Economic Committee should have the power to appoint temporary sub-committees of experts for preparatory work and, subject to Council approval and in consultation with the States in question, to name economic correspondents in countries which have no member on the committee.

c) That a "consultative committee," the object of which is to follow the application of the Economic Conference recommendations, should be constituted by the Council.

It might be composed of about thirty-five members, as was the Preparatory Committee [for the World Economic Conference], and the conditions of equilibrium attained in the latter between the various elements should be maintained as far as possible.

*It should therefore include, among others, persons competent in industry, commerce, agriculture, finance, transport, labour questions and questions relative to consumption.*

The International Labor Office should be invited to submit the names of three labor members for this committee.

The Council will doubtless also wish to secure for the committee the co-operation of the International Institute of Agriculture and of the International Chamber of Commerce.

Five members chosen by the Economic Committee should take part in the work of the Consultative Committee with the same rights as the other members.

The Consultative Committee should submit its report directly to the Council of the League of Nations. At the same time, it would forward a copy to the Economic Committee and to the other Technical Organizations concerned.<sup>21</sup>

In point of size the Consultative Committee soon outgrew the limits foreshadowed in the above resolution. By the time of its second annual session, in May 1929, the membership had increased to fifty-two, drawn from

<sup>21</sup> *Official Journal*, Special Supplement No. 53, October 1927, pp. 14–15. (Writer's italics.)



twenty-six different nations, of whom three were from the United States. But the increase in the size of the committee, found necessary in order to give well-balanced representation to all the major divisions of economic organization, only emphasized the underlying conception. This was the desirability of establishing under League auspices a council of independent experts which should on the one hand advise the League's Economic Organization as to policy, and should on the other hand endeavor to arouse support for those policies in the member and non-member States from which the committee's personnel is selected.

The Consultative Committee has been called "the legatee of the Economic Conference" and at its first two annual meetings the program consisted of a review of the results obtained by international action in the economic field during the preceding year, and of an adumbration of what would seem desirable League policy in that line during the succeeding twelve-month.<sup>22</sup> The Economic Organization, therefore, has shown a tendency to develop as a sort of microcosm of the League itself. The Consultative Committee, meeting annually to review the past and plan for the future, with a very broad international membership, could be said to provide a general parallel to the Assembly of the League. The Economic Committee, limited to one member from each of the nations selected as of major commercial importance, may be compared with the Council. For these two bodies the Economic Section of the Secretariat plays much the same role as is played by the entire Secretariat for the League as a whole. The smaller wheel within the larger is complete.

#### OTHER COMMITTEES OF CONSULTATIVE NATURE

The Economic Organization is not the only one in which a Technical Organization of the League has found

<sup>22</sup> No meeting has been held since May 1929. See p. 620 below.

it advisable to model itself on the general plan of the parent body. The Assembly-Council-Secretariat pattern can be found even more clearly in the case of the Health Organization. Here there is an Advisory Council, which is merely another name for the executive committee of the pre-war *Office International d'Hygiène Publique*, having a membership of thirty-odd States and meeting twice a year. This Advisory Council, though the name may be confusing, is to the Health Organization what the Assembly is to the League as a whole. The smaller Health Committee, nearly all of whose members are government officials,<sup>23</sup> is akin to the League Council from the organizational viewpoint. And in relation to the Health Organization *in toto* the Health Section of the Secretariat functions as does the entire Secretariat to the entire League. It must, of course, be remembered that there is a vital constitutional difference between the major and minor patterns, the former being quasi-governmental and the latter merely administrative in character.

The same development is to be found, with natural variations according to the departmental activity, in most of the League's technical work. After 1925, the Section on Intellectual Co-operation worked not merely with the Committee on Intellectual Co-operation, but also with the Institute of Intellectual Co-operation in Paris, which was supposed to serve as a thoroughly international advisory bureau for subjects falling within this field of League activities. When the Paris Institute failed to fulfill expectations, for reasons which need not be detailed here, there arose, in 1930, a successful move to create a small executive committee within an enlarged Committee on Intellectual Co-operation. Thus was revealed the half-instinctive effort to develop the pattern of an inter-

<sup>23</sup> In 1932 the American member, for instance, of the League's Health Committee was Surgeon-General Hugh S. Cumming, chief of the United States Public Health Service.

governmental group as executive and a larger body of functional international specialists as the advisory arm.

In 1928, a Central Opium Board, composed of independent experts, was established in addition to the original League committee on the opium traffic, whose members are government appointees, and for the most part civil servants. The difference in the theory behind these two opium committees may be visualized from the fact that the first American representative on the older body was Mr. John Kenneth Caldwell, of the Department of State, while the original American appointee to the Central Opium Board was Mr. Herbert L. May, for years prominent in the drug industry.

Even in the field of disarmament, where vagaries of organization have been more pronounced than system, the trend towards the introduction of technical advisers in a position to balance the governmental committee has been apparent. The situation in this case is very complicated, but it may be noted here that the Permanent Advisory Commission was at first supposed to serve such function, and failed to do so largely because its members saw themselves as governmental representatives rather than as purely technical spokesmen. When an admittedly governmental committee was established, in the shape of the Preparatory Commission for the Disarmament Conference, the need of non-military impartial technical help again came to the fore. It was met, in part, by the establishment, in 1927, of the civilian Committee on Arbitration and Security.

In short, the evolution of the League has shown that the original technique of international co-operation through committees of official spokesmen is not adequate. The committees of officials continue to play a dominant role, but their efforts are now supplemented, on the side by collaborating commissions of private experts, and from underneath by co-operating sub-committees of highly

specialized technicians. "This tendency is no more than a projection into the international sphere of the growing importance of group organization within modern communities."<sup>24</sup> It is no longer enough, as Mr. Laski has argued, that: "The British Board of Trade should deal directly with the French Ministry of Commerce; the Italian Ministry of Agriculture should concert measures with the German Minister of Agriculture."<sup>25</sup> Co-operation between British and French coal interests, between Italian and German agricultural organizations, is also needed. The international cartel movement, whatever its present weaknesses and abuses, is obviously a step in this direction, and a potential aid to the League's attempt to build the structure of a world community. As such it was analyzed in the report of the World Economic Conference of 1927.<sup>26</sup>

From the pre-war system of formal international contact along a series of single points—the foreign ministries—the League early developed the idea of adding other series of contacts between the appropriate executive departments of the member States. The extension of this theory aims to further international contacts not merely between governments, but also between occupations. The purpose is to forward international co-operation not by arithmetical but by geometrical progression. Through such multiplicity of co-operation, working freely with the League as a co-ordinating agency, there would come into being not a federalized super-State but an acknowledged world community organized in a loose confederation of existing national units.

#### THE BALANCE BETWEEN FORMS OF CO-OPERATION

This movement towards closer association on a professional basis is of an unnational rather than an interna-

<sup>24</sup> H. R. G. Greaves, *The League Committees and World Order*, p. 253.

<sup>25</sup> See above, p. 612 (footnote).

<sup>26</sup> See also Salter, *Recovery*, pp. 230–37.

tional or super-national type. It accepts the nation as the political unit which it is but tends to disregard it as the economic and cultural unit which, even in the most self-sustaining cases, it cannot be. The underlying theory, moreover, goes far towards meeting the frequently voiced, though vague, insistence that the League should be a league of peoples rather than a league of nations. A people, after all, asserts its corporate character through the establishment of group life and finds self-expression as well as livelihood in functional association, whether productive, distributive, or consumptive. Through extension of this association beyond the artificial boundary of the political frontier a true league of peoples without the restraints of super-State organization can be developed, and is instinctively tending to develop. To facilitate the expression and integration of interests common to all the useful groupings of society—as well as to disintegrate such harmful groupings as the international narcotics traffic—is an underlying purpose of the League in which it leans as heavily on public as on governmental support.

It is to be recognized, however, that the trend is to be regarded as an alternating program rather than as a directly progressive development. The flexibility of League technique is one of its greatest assets, allowing emphasis to be directed as the conditions of the moment dictate. During the early stages of the great depression, for instance, there was a tendency to say that the Economic Consultative Committee, whose conclusions bind none of its members to any unpleasant responsibilities, had gone too far and fast in urging the League to attempt undertakings which its member States would not sponsor. It was all too obvious that virtual governmental strangulation of international trade through tariffs and embargoes followed upon the heels of agreement at the World Economic Conference that the time had come "to move

in the opposite direction." Evidence that some co-operative action by governments was more needed than further co-operative advice by functional specialists led to suspension of the meetings of the Economic Consultative Committee in 1930, 1931, and 1932. Herein League policy probably erred, for it would seem that intensification of inter-governmental rivalry calls for more rather than less emphasis upon group co-operation.<sup>27</sup>

The strength of the bureaucratic psychology at Geneva is also apparent in the reiterated, and at first perplexing, assertion that European federal union "must be a political reality or it cannot be an economic one."<sup>28</sup> It is not within the field of this study to consider to what extent that development represents a continental reaction against American competition. But the basing of the original Briand memorandum on this subject on the principle of "the general subordination of the economic problem to the political problem"<sup>29</sup> is significant. For this stresses the predominant League opinion that authoritative unofficial opinion is relatively futile unless backed by responsible official authority.

Between functional and official co-operation under the League ægis, a proper balance, adaptable to the exigencies of the moment, should at all times be kept. Stalemate results if either is stressed without regard to the development of the other. But while it is obvious that the world-wide breakdown of the depression period was

<sup>27</sup> A weakness of purely governmental co-operation was shown when the first of the conferences on concerted economic action, which took the place of the Economic Consultative Committee in 1930, was held up first by a change in the French and then by a change in the Polish government. These changes forced the representatives of these countries to admit inability to act until the receipt of fresh instructions from their respective capitals. Yet such changes of government do not for one moment interrupt the need of a people to associate with others in financial, commercial, or intellectual pursuits.

<sup>28</sup> Compare *Documents Relating to the Organization of a System of European Federal Union*, League Document A. 46. 1930. VII.

<sup>29</sup> The same, p. 12.

intensified by inter-governmental rivalries, it is almost equally apparent that governments fought each other in the economic field because functional co-operation in that field has been inadequately developed. It was not accord between State governments but accord between the producers, distributors, and consumers of the various States which cemented American union. And in more complete recognition of the co-ordinating power of unofficial interests lies much of the hope for future progress of the League. The policy has already resulted in making the United States, though its government is not a League member, one of the most active collaborators in the varied technical work of the League. And its future possibilities are indicated by the recent suggestions that national economic councils should be linked in a world economic council and that the latter should be associated with the League of Nations as national councils, where established, are tending to be associated with the governments of their political areas.<sup>80</sup>

#### RELATIONSHIP OF LEAGUE AND LABOR ORGANIZATION

The development of the theory of international administration to the stage where it includes co-operation between private groups has served to emphasize the anomalous relationship between the League and the International Labor Organization, which is itself an organ for functional co-operation of a limited kind. The International Labor Office is "established at the Seat of the League of Nations as part of the organization of the League."<sup>81</sup> But it has in the past maintained almost complete autonomy in its fundamental task of reconciling "the ideas and purposes of governments, employers and labor unions in various stages of development."<sup>82</sup> On this

<sup>80</sup> Compare Salter, *Recovery*, pp. 250-53; also Lewis L. Lorwin, *Advisory Economic Councils*, pp. 52-54.

<sup>81</sup> Treaty of Versailles, Part XIII (Labor Section), Article 392.

<sup>82</sup> Lorwin, *Labor and Internationalism*, p. 478.

autonomy the Economic Organization of the League, since it began to work in behalf of non-governmental economic co-operation, has steadily tended to encroach. Such encroachment is bringing a tacit, but none the less profound, modification of the originally independent position of the International Labor Organization. This independence is likely to be further modified by the passing of the first director of the Labor Office, M. Albert Thomas, whose dynamic and aggressive personality molded its policy until his untimely death, in May 1932.

The work of the League's Economic Organization with reference to international aspects of the problems of the coal industry is a case in point. A formal inquiry on this subject was started in 1928, on the suggestion of M. Gustave L. Gerard, a Belgian member of the Consultative Committee, director-general of the Central Industrial Committee of Belgium, and an active member of the International Chamber of Commerce. It was the general opinion of the Economic Committee, after lengthy consultation with various experts in the coal industry, that the League might well interest itself, without assuming sponsorship, in the following proposals:

- a) That international agreements between producers should be arranged concerning output, markets and prices;
- b) That a special international committee representative of all interests—governments, employers, miners, merchants and consumers—should be set up;
- c) That measures should be taken for assimilating, if not equalizing, wages, hours, and the social conditions of labor;
- d) That the existing artificial restrictions to trade in coal and artificial stimuli to production should be abolished.<sup>83</sup>

Among these proposals, it is immediately obvious, the conditions of labor are only one—and that not the most far-reaching—of the considerations. In its interim

<sup>83</sup> League Document C. 750. M. 58. 1929. II, p. 13.



report on "The Problem of the Coal Industry" the League's Economic Committee logically observed that:

As regards the third of the proposals for international action, that which relates to wages and hours, we will confine ourselves at this stage to saying that action in this field would appear to fall within the competence of the International Labor Office, not that of the Economic Organization of the League.<sup>84</sup>

In due course (January 1930) a technical conference of representatives of the nine coal-producing nations of Europe was summoned by and at the International Labor Office with a view to forwarding standardization of working hours, and perhaps also "real" wages in the Continental coal industry. Since then the subject has continued to be one of the most important on the Labor Organization's agenda and in June 1931 an international convention regulating the hours of work in mines was adopted, subject to ratification by the interested States.

Thus, if we may argue from the particular to the general on the basis of this one instance, it is clear that from a functional viewpoint the logical status of the International Labor Office is that of a specialized sub-committee of the League's Economic Organization. And, if detailed consideration of the point were desirable, similar conclusions could be drawn from a consideration of the expert, specialized, but subordinate work done by the International Labor Organization for other League Organizations, such as Transit, Health, and Mandates, in the last of which an "assessor" provided by the Labor Office has as his special duty examination of the protection afforded to native labor in mandated areas.

While the passage of time tends to make clear that the correct functional character of the International Labor Organization is that of a specialized adjunct to the League, its constitutional autonomy under Part XIII of

<sup>84</sup> The same, p. 18.

the Treaty of Versailles remains unaffected. The Labor Organization has its own General Conference (Assembly), its own Governing Body (Council), and its own "Office" (Secretariat). Its Director is largely independent of control by the League's Secretary-General,<sup>85</sup> although equally subject to the budgetary control of the Assembly. In matters of policy the International Labor Organization is virtually free from League direction, which is exemplified by the fact that while the Organization is technically a part of the League it is always referred to as a separate and parallel body.

The adjectives "separate" and "parallel" are used advisedly, for separation in this case does not mean divergence of policy. It is to be remembered that the membership of the League and the Labor Organization is almost uniform, and from most national capitals the two appear more closely associated than seems to be the case at Geneva. It was, for instance, more than a coincidence that in the same month (March 1930) the League's Health Committee approved far-reaching assistance in the Public Health program of the Chinese Nationalist government, the International Labor Office sent a member of its staff to Nanking to organize a correspondent's office in that country. The Chinese government had earlier requested technical assistance from what are really two arms of the same organism, even though the request for medical guidance had to be approved by the League Council and that for an industrial information bureau by the Governing Body of the International Labor Office.

#### THE NETWORK OF INTERNATIONAL CONTACTS

The natural tendency towards close co-operation between the League and the Labor Organization has been forwarded by the rapid development of the League's economic work, which necessarily became more functional

<sup>85</sup> For qualifications of the Director's independence, see p. 312 above.

as inquiries into the production of specific commodities, such as coal and sugar, were launched. And, as has been said, the partially functional basis of the Labor Organization, with its tri-partite representation of governments', employers', and workers' representatives, has been useful to the League as supplementing its original tendency to concentrate on the narrow basis of strictly governmental representation. But with the present tendency of League committees to develop along the lines of functional representation, there is a probability that its political philosophy will leap from a stage behind to a stage ahead of that of the Labor Organization. In the last analysis, the latter is rather closely connected with class-war doctrines. The equal representation of workers, employers, and governments in the General Conference and Governing Body indicates a belief in the validity of State action to hold the scales between two opposed and essentially hostile groups.

On the other hand, the theory that groups such as the shipping interests, railroads, the coal industry, and agriculture should each have their spokesmen on League commissions considering their particular problems, is based upon an unprovocative principle. It is that those most familiar with the technique of a calling are also most competent to solve the internal problems and to indicate solutions for the external problems which beset that calling, subject, of course, to a general control by government in the interests of the community as a whole.

The International Labor Organization proceeds on the arbitrary theory that community life can be departmentalized into the three divisions of employing-class interests, working-class interests, and all other interests, these last being vaguely represented by government officials. The theory towards which the League is tending is perhaps much more wholesome and is certainly much more accurate in its reflection of the way community life

operates. Under this theory the spokesmen of group interests, including employed as well as employers, are expected to do what they can to forward the solution of their professional problems. When the solution of these problems demands governmental action, and not before, the responsible officials are brought in to try and clear away the external obstacles. In the same way official inter-State co-operation, through international machinery, is to a large extent predicated on unofficial inter-State co-operation by functional groups, which the League can assist but cannot be expected to create. With unofficial co-operation firmly established, that between governments naturally becomes much easier.

As the International Labor Organization matures, however, there are many indications, in the slowing-down of the drafting of sumptuary conventions, in the tendency to substitute therefor "recommendations,"<sup>86</sup> and in the increasing attention to research and the spreading of factual information, that it is coming to recognize the value of voluntary as well as legal action as a cure for undesirable working conditions. The organization is no longer so amenable to the questionable belief that paternalistic governments can accomplish wholesome social reforms by mere fiat. With the passage of time the Labor Organization has settled down as an important technical, humanitarian, and research agency of the League. And in this subordinate capacity its utilization of functional representation, even in crude form, is having a valuable effect upon the administrative theory of the more important organ of international co-operation. It may well in future be found to have helped to provide the formula whereby an international bank, linking the

<sup>86</sup> Recommendations, if approved by a two-thirds vote of the International Labor Conference, must be brought up for the consideration of the proper authority in every member State. They have only an advisory character. Federal governments have the right to treat a draft convention as a recommendation if there is constitutional limitation on their power to enter into agreements on the subject matter of the Convention.

great central banks of the world, can be brought into intimate co-operation with the League without subordination to the political machinery of the latter. The relationship of the Permanent Court of International Justice to the central League machinery is, of course, already satisfactorily settled.

#### THE NATIONAL FRONTIER IN TRUE PERSPECTIVE

The original League theory was one which, on the war-time model, sought to develop international bureaucratic co-operation. The developing theory of the League in which the United States can, and does, assist without violation of national traditions or constitutional limitations, is much broader. It is one in which the network of international contacts is not merely between governmental departments, not merely between national representatives of the employer and employed classes, but also between leaders in all those lines of human endeavor which are arbitrarily balked by artificial frontiers. The central organs of the League, as they develop, have come to illustrate this catholicity of co-operative effort. The Council is primarily inter-governmental in character. The Assembly, although predominantly an inter-governmental organ, reflects a distinctly functional aspect in its committee organization and in the part played by "experts" in its deliberations. The Technical and Advisory Commissions are predominantly functional in composition. And the Secretariat, in theory at least, is in no sense an inter-governmental organ but a non-national civil service and administrative body.

Thus the stage has been set for global rather than strictly international co-operation on a scale which would have satisfied the most Utopian theorist of the nineteenth century. Yet the absence in this co-operation of any form of dictation, other than the pressure of enlightened public opinion, insures that there shall be no

overt encroachment on the jealously guarded prerogative of national sovereignty. Indeed, in many ways the League seeks to extend rather than to limit the national prerogative of its members. As was the case with pre-war imperialisms it accepts the obvious truism that the political frontier in the modern world is not the boundary of national life. On this premise, however, it seeks to build, not empire but a peaceful and prosperous world community dedicated to the furtherance of unity without the suppression of diversity.

An effective society of nations neither presupposes nor anticipates the creation of a super-State. It does envisage a loosening of the political fetters of the nationalist era in order that an essentially co-operative civilization may survive. Doubtless, the growth of this co-operative principle will in time re-define a conception of sovereignty which we have inherited from a stage of civilization where the nation-state symbolized an economically isolated and largely self-sufficient community. Fundamentally, the League itself must be regarded as an expression of the new concept of sovereignty as demanded by the facts of the post-war and depression-ridden world. The Society of Nations has been established not to override the independence of the nation-state, but to avert the deterioration and submergence of the national contribution in a world where frontiers have lost so much of their economic, cultural, and intellectual validity.



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**APPENDIX A**  
**THE COVENANT**

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## THE COVENANT OF THE LEAGUE OF NATIONS

*(With the paragraphs numbered in accordance with the resolution adopted at the Seventh Ordinary Session of the Assembly, on September 16, 1926, and embodying the amendments to Article 6, in force as from August 13, 1924; to Articles 12, 13, and 15, in force as from September 26, 1924; and to Article 4, in force as from July 29, 1926. The amendments made have been italicized in the following text.)*

### THE HIGH CONTRACTING PARTIES,

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among governments,

and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another,

Agree to this Covenant of the League of Nations.

### ARTICLE 1

1. The original members of the League of Nations shall be those of the signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other members of the League.

2. Any fully self-governing State, dominion or colony not named in the Annex may become a member of the League if its admission is agreed to by two-thirds of the

Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

3. Any member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

## ARTICLE 2

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

## ARTICLE 3

1. The Assembly shall consist of representatives of the members of the League.

2. The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.

3. The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

4. At meetings of the Assembly, each member of the League shall have one vote, and may have not more than three representatives.

## ARTICLE 4

1. The Council shall consist of representatives of the principal Allied and Associated Powers,<sup>1</sup> together with

<sup>1</sup> The principal Allied and Associated Powers are the following: The United States of America, the British Empire, France, Italy and Japan (see preamble of the Treaty of Peace with Germany).

representatives of four other members of the League. These four members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the representatives of the four members of the League first selected by the Assembly, representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

2. With the approval of the majority of the Assembly, the Council may name additional members of the League whose representatives shall always be members of the Council;<sup>2</sup> the Council with like approval may increase the number of members of the League to be selected by the Assembly for representation on the Council.<sup>3</sup>

*2 bis. The Assembly shall fix by a two-thirds majority the rules dealing with the election of the non-permanent members of the Council, and particularly such regulations as relate to their term of office and the conditions of re-eligibility.*

3. The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

4. The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

5. Any member of the League not represented on the Council shall be invited to send a representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that member of the League.

6. At meetings of the Council, each member of the

<sup>2</sup> In virtue of this paragraph of the Covenant, Germany was nominated as a permanent member of the Council on Sept. 8, 1926.

<sup>3</sup> The number of members of the Council selected by the Assembly was increased to six instead of four by virtue of a resolution adopted at the third ordinary meeting of the Assembly on Sept. 25, 1922. By a resolution taken by the Assembly on Sept. 8, 1926, the number of members of the Council selected by the Assembly was increased to nine.

League represented on the Council shall have one vote, and may have not more than one representative.

#### ARTICLE 5

1. Except where otherwise expressly provided in this Covenant, or by the terms of the present treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the members of the League represented at the meeting.

2. All matters of procedure at meetings of the Assembly or of the Council, including the appointment of committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the members of the League represented at the meeting.

3. The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

#### ARTICLE 6

1. The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

2. The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

3. The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

4. The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

5. *The expenses of the League shall be borne by the*

*members of the League in the proportion decided by the Assembly.*<sup>4</sup>

#### ARTICLE 7

1. The Seat of the League is established at Geneva.
2. The Council may at any time decide that the Seat of the League shall be established elsewhere.
3. All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.
4. Representatives of the members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.
5. The buildings and other property occupied by the League or its officials or by representatives attending its meetings shall be inviolable.

#### ARTICLE 8

1. The members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.
2. The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several governments.
3. Such plans shall be subject to reconsideration and revision at least every ten years.
4. After these plans shall have been adopted by the several governments, the limits of armaments therein

<sup>4</sup> This amendment replaced the following text:

"5. The expenses of the Secretariat shall be borne by the members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union."

fixed shall not be exceeded without the concurrence of the Council.

5. The members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

6. The members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to warlike purposes.

#### ARTICLE 9

A permanent commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

#### ARTICLE 10

The members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

#### ARTICLE 11

1. Any war or threat of war, whether immediately affecting any of the members of the League or not, is hereby declared a matter of concern to the whole League,

and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any member of the League forthwith summon a meeting of the Council.

2. It is also declared to be the friendly right of each member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

#### ARTICLE 12

1. The members of the League agree that if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration *or judicial settlement* or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators *or the judicial decision* or the report by the Council.

2. In any case under this article the award of the arbitrators *or the judicial decision* shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

#### ARTICLE 13

1. The members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration *or judicial settlement*, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject matter to arbitration *or judicial settlement*.

2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence

of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or *judicial settlement*.

3. *For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.*<sup>5</sup>

4. The members of the League agree that they will carry out in full good faith any award or *decision* that may be rendered, and that they will not resort to war against a member of the League which complies therewith. In the event of any failure to carry out such an award or *decision*, the Council shall propose what steps should be taken to give effect thereto.

#### ARTICLE 14

The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a permanent court of international justice. The court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

#### ARTICLE 15

1. If there should arise between members of the League any dispute likely to lead to a rupture, which is

<sup>5</sup> This amendment replaced the following text:

"For the consideration of any such dispute, the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them."



not submitted to arbitration or *judicial settlement* in accordance with Article 13, the members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

2. For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

3. The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

4. If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

5. Any member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

6. If a report by the Council is unanimously agreed to by the members thereof other than the representatives of one or more of the parties to the dispute, the members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

7. If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the members of the League reserve to them-

selves the right to take such action as they shall consider necessary for the maintenance of right and justice.

8. If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

9. The Council may in any case under this article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute provided that such request be made within fourteen days after the submission of the dispute to the Council.

10. In any case referred to the Assembly, all the provisions of this article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the representatives of those members of the League represented on the Council and of a majority of the other members of the League, exclusive in each case of the representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the representatives of one or more of the parties to the dispute.

## ARTICLE 16

1. Should any member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the

nationals of the covenant-breaking State and the nationals of any other State, whether a member of the League or not.

2. It shall be the duty of the Council in such case to recommend to the several governments concerned what effective military, naval or air force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

3. The members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the members of the League which are co-operating to protect the covenants of the League.

4. Any member of the League which has violated any covenant of the League may be declared to be no longer a member of the League by a vote of the Council concurred in by the representatives of all the other members of the League represented thereon.

#### ARTICLE 17

1. In the event of a dispute between a member of the League and a State which is not a member of the League, or between States not members of the League, the State or States not members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

2. Upon such invitation being given the Council shall immediately institute an enquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

3. If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

4. If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

#### ARTICLE 18

Every treaty or international engagement entered into hereafter by any member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

#### ARTICLE 19

The Assembly may from time to time advise the reconsideration by members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

#### ARTICLE 20

1. The members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings inter se which are inconsistent with the terms thereof, and solemnly undertake that they will not

hereafter enter into any engagements inconsistent with the terms thereof.

2. In case any member of the League shall, before becoming a member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such member to take immediate steps to procure its release from such obligations.

#### ARTICLE 21

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace.

#### ARTICLE 22

1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as mandatories on behalf of the League.

3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

4. Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the mandatory.

5. Other peoples, especially those of Central Africa, are at such a stage that the mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other members of the League.

6. There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the mandatory, and other circumstances, can be best administered under the laws of the mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

7. In every case of mandate, the mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

8. The degree of authority, control, or administration to be exercised by the mandatory shall, if not previously agreed upon by the members of the League, be explicitly defined in each case by the Council.

9. A permanent commission shall be constituted to receive and examine the annual reports of the mandatories and to advise the Council on all matters relating to the observance of the mandates.

#### ARTICLE 23

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the members of the League:

- (a) Will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations;
- (b) Undertake to secure just treatment of the native inhabitants of territories under their control;
- (c) Will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;
- (d) Will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;
- (e) Will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-18 shall be borne in mind;
- (f) Will endeavour to take steps in matters of international concern for the prevention and control of disease.

## ARTICLE 24

1. There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

2. In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

3. The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

## ARTICLE 25

The members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

## ARTICLE 26

1. Amendments to this Covenant will take effect when ratified by the members of the League whose representatives compose the Council and by a majority of the members of the League whose representatives compose the Assembly.



2. No such amendment shall bind any member of the League which signifies its dissent therefrom, but in that case it shall cease to be a member of the League.

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MEMBERS OF THE LEAGUE IN 1932

Abyssinia	Irish Free State
Albania	Italy
Argentine Republic	Japan
Australia	Jugoslavia
Austria	Latvia
Belgium	Liberia
Bolivia	Lithuania
British Empire	Luxemburg
Bulgaria	Mexico
Canada	Netherlands
Chile	New Zealand
China	Nicaragua
Colombia	Norway
Cuba	Panama
Czechoslovakia	Paraguay
Denmark	Persia
Dominican Republic	Peru
Estonia	Poland
Finland	Portugal
France	Roumania
Germany	Salvador
Greece	Siam
Guatemala	South Africa
Haiti	Spain
Honduras	Sweden
Hungary	Switzerland
India	Uruguay
Venezuela	



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**APPENDIX B**

**COMMITTEES AND COMMISSIONS**

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COMMITTEES AND COMMISSIONS OF THE LEAGUE, 1931  
 (\* Signifies American representation)

Secretariat Division	Conjoint Organizations	
	Advisory, Technical, and Administrative Bodies	Remarks
Administrative Commissions and Minorities Section	1. Saar Governing Commission	Versailles Treaty, Article 50. Five members, one French, one Saarois, and three other nationals, not French or German. Named by the Council for one-year terms, with re-eligibility.
	2. Danzig High Commissioner	Versailles Treaty, Article 103. Named by the Council for a three-year term, with re-eligibility.
	3. President of the Danzig Port and Waterways Board	Under Article 19 of the Polish-Danzig Convention of November 1920, the president of this board is chosen by agreement between the two contracting parties. When such agreement is not reached the Council appoints a president of Swiss nationality for a term of three years. The present appointee, M. Benzinger, was so chosen in 1931.
	4. Presidents of Upper Silesian Mixed Commission and Arbitral Tribunal	German-Polish Convention of May 15, 1922, Article 564. Appointed by the Council.
	5. Greco-Bulgarian Emigration Commission	Greco-Bulgarian Convention of November 27, 1919, Article 8. Two members, including president, nominated by the Council.
	6. Greco-Turkish Exchange of Population Commission	Greco-Turkish Convention of January 30, 1923. Three members, including president, nominated by the Council.
	*7. Greek Refugee Settlement Commission	Two members named by the Greek government with the approval of the Council without limitation; one member, an American, named by the Council as president. The work of this Commission was completed in 1930.

COMMITTEES AND COMMISSIONS OF THE LEAGUE, 1931—(Continued)  
 (\* Signifies American representation)

Secretariat Division	Conjoint Organizations	
	Advisory, Technical, and Administrative Bodies	Remarks
Administrative Commissions and Minorities Section (Continued)	8. Bulgarian Refugee Settlement Commission	Commissioner appointed by the Council.
	9. Hydraulic System Commission of the Danube	Chairman appointed by the Council.
Communications and Transit Section	*1. General Conference on Communications and Transit	The Communications and Transit Organization is the only League Technical Organization with a written and semi-autonomous constitution framed, on the basis of resolutions of the first session of the Assembly, by the Barcelona Conference of 1921. The General Conference is convened by the Council normally every four years, or more frequently by the Secretary-General on the written request of at least half the League membership. It is composed of technical representatives of all States members of the League, and representatives of such other States as the Conference itself invites. Its function is to supervise the work of the Advisory Committee for Communications and Transit, renew its membership when necessary, and revise its own statute as circumstances dictate.*

\* For a full description of the Transit Organization see *Ten Years of World Co-operation*, Chap. VI. Compare also *Selected Minutes of Barcelona Conference*, League Document 662. M. 265. 1923. VIII; and *Rules of Procedure of the Advisory and Technical Committee for Communications and Transit*, League Document C. 331. M. 134. 1930. VIII, pp. 136-38. The Council appoints the president of the General Conference on Communications and Transit.

## COMMITTEES AND COMMISSIONS OF THE LEAGUE, 1931—(Continued)

(\* Signifies American representation)

Secretariat Division	Conjoint Organizations	
	Advisory, Technical, and Administrative Bodies	Remarks
Communications and Transit Section (Continued)	<p>2. Advisory and Technical Committee for Communications and Transit</p> <p>a. Ports and Maritime Navigation</p> <p>b. Inland Navigation</p> <p>c. Transport by Rail</p> <p>d. Electrical Questions</p> <p>e. Road Traffic</p> <p>* f. Co-operation in Civil Aviation</p> <p>g. Legal</p> <p>h. Budget</p>	Constituted by the Barcelona Conference. The specialized technical bodies are its permanent sub-committees. During 1931 there were also eleven temporary committees of the Transit Organization functioning, three of them with American representatives. The Chairman of the parent committee appoints one of the three members of the Memel Harbor Board.
Disarmament Section	<p>1. Permanent Advisory Commission</p> <p>*2. Preparatory Commission for the Disarmament Conference</p> <p>3. Committee on Arbitration and Security</p>	<p>Constituted by resolution of the fifth Council session, pursuant to Article 9 of the Covenant.</p> <p>Established by resolution of the Sixth Assembly; composed of governmental representatives of the States members of the Council and of such other States as the Council may decide. Concluded final session on December 9, 1930.</p> <p>Appointed by the Preparatory Commission, in accordance with a resolution of the Eighth Assembly.</p>
Economic Relations Section	<p>*1. Economic Committee</p> <p>*a. Statistical Experts</p> <p>b. Customs Nomenclature</p> <p>c. Veterinary Police Measures</p> <p>d. Concerted Economic Action</p> <p>*2. Economic Consultative Committee</p>	<p>Constituted by the Brussels Conference of 1920.</p> <p>Established by the Council pursuant to a resolution of the Eighth Assembly.</p>

COMMITTEES AND COMMISSIONS OF THE LEAGUE, 1931—(Continued)  
 (\* Signifies American representation)

Secretariat Division	Conjoint Organizations	
	Advisory, Technical, and Administrative Bodies	Remarks
Financial Section	<p>*1. Financial Committee</p> <p>*a. Austrian Financial Reconstruction</p> <p>*b. Hungarian Financial Reconstruction</p> <p>*c. Greek Refugee Settlement Loan</p> <p>d. Bulgarian Refugee Settlement Loan</p> <p>*e. Counterfeit Currency</p> <p>*f. Double Taxation</p> <p>g. Danzig Municipal Loan</p> <p>h. Estonian 1927 Loan</p> <p>i. Organization of International Agricultural Mortgage Credit Company</p>	Constituted by the Brussels Conference of 1920.
	*2. Fiscal Committee	The Fiscal Committee, primarily concerned with international taxation problems, held its first session in October 1929, twelve members having been named by the fifty-fifth session of the Council, in June 1929. Two other members are delegates of the Financial Committee. There are also a score of corresponding members.
Health Section	*1. Advisory Council	Reorganized on its present basis by the Third Assembly, in 1922. The Advisory Council is the permanent committee of the Office International d'Hygiène Publique, in Paris.
	<p>*2. Health Committee</p> <p>*a. Malaria</p> <p>b. Hygiene and Health Insurance</p>	This Committee contains more experts from private life than is the case with most of the other League technical committees. Its



## COMMITTEES AND COMMISSIONS OF THE LEAGUE, 1931—(Continued)

(\* Signifies American representation)

Secretariat Division	Conjoint Organizations	
	Advisory, Technical, and Administrative Bodies	Remarks
Health Section (Continued)	<ul style="list-style-type: none"> <li>*c. Standardization of Biological Products</li> <li>*d. Studies in Trypanosoma</li> <li>*e. Leprosy</li> <li>f. Opium and Narcotics</li> <li>*g. Ship Fumigation</li> <li>h. Infant and Maternal Welfare</li> <li>i. Venereal Diseases</li> <li>*j. Tuberculosis</li> <li>k. Rural Health</li> </ul> <p>3. Eastern Bureau at Singapore</p>	<p>members are appointed for a period of three years. There are several permanent sub-committees of the committees listed, some of these having representatives from the United States.</p> <p>The President of the Eastern Bureau (established 1929) is a member of the Health Committee. The Health Organization has several sub-commissions in addition to the major bodies here listed.</p>
Information Section	No technical or advisory committees	From the nature of its work the Information Section must maintain contact with every part of the League's organization.
International Bureaus and Intellectual Co-operation Section	<ul style="list-style-type: none"> <li>*1. Committee on Intellectual Co-operation</li> <li>*a. Arts and Letters</li> <li>*b. Instruction for Young People in League Aims</li> <li>*c. Interchange of Teachers</li> <li>d. Librarians</li> <li>*e. Museums</li> </ul> <p>*2. Institute of Intellectual Co-operation in Paris</p>	<p>The general committee was appointed in accordance with a resolution of the Second Assembly. Its members are appointed by the Council in an individual capacity and sit as the governing body of the Paris Institute. A small executive committee of the General Committee was established in 1930 and meets quarterly.</p>

COMMITTEES AND COMMISSIONS OF THE LEAGUE, 1931—(Continued)  
 (\* Signifies American representation)

Secretariat Division	Conjoint Organizations	
	Advisory, Technical, and Administrative Bodies	Remarks
International Bureaus and Intellectual Co-operation Section (Continued)	*3. Educational Cinematographic Institute in Rome	The governing body of the Cinematographic Institute was appointed in accordance with a Council resolution of September 26, 1928.
	4. Institute for Unification of Private Law in Rome	The Council appoints the delegates representing the various States members of this Institute.
	*5. Institute of Agriculture in Rome	The position of the Institute of Agriculture, <i>vis-à-vis</i> the League, is as yet ill defined. The tenth assembly of the Institute, held at Rome in October 1930, approved negotiations which have been entered upon "with the object of arriving at a definite understanding with the League while maintaining the independent character of the Institute."
Legal Section	*1. Committee for Progressive Codification of International Law  2. Committee for Harmonizing the Covenant with the Pact of Paris	These Committees, established by the Council in accordance with resolutions of the Fifth and Eleventh Assemblies, are <i>ad hoc</i> bodies, independent of any Secretariat section. They may, however, conveniently be classified in conjunction with the Legal Section, which has greatly assisted their work.
Mandates Section	1. Permanent Mandates Commission	Covenant, Article 22 (9). Members are appointed by the Council as experts on colonial problems, not as government representatives.
Political Section	No technical or advisory committees	Broadly speaking, the Council might be termed the permanent League committee for which the Political Section serves as secretariat.

COMMITTEES AND COMMISSIONS OF THE LEAGUE, 1931—(Concluded)  
 (\* Signifies American representation)

Secretariat Division	Conjoint Organizations	
	Advisory, Technical, and Administrative Bodies	Remarks
Refugees Section (Temporary)	1. Nansen International Office for Refugees	Established at Geneva by the Eleventh Assembly to complete the work initiated by Dr. Nansen. For regulations see <i>Official Journal</i> , April 1931, pp. 746-54.
	2. Refugee Advisory Commission	Appointed as the result of a resolution of the Ninth Assembly.
Social and Humanitarian Questions Section	*1. Advisory Committee on Traffic in Opium	Appointed by the Council in accordance with a resolution of the First Assembly. The members represent their governments.
	*2. Central Opium Board	Appointed December 14, 1928 in accordance with Article 19 of the Geneva Opium Convention of 1925. The members are appointed by the Council in an individual capacity.
	*3. Advisory Commission for Protection of Children and Young People *a. Traffic in Women and Children *b. Child Welfare	
	*4. Preparatory Committee for the International Relief Union	Appointed pursuant to instructions of the Fifth Assembly.
All Sections	Commission of Inquiry for European Union	Established pursuant to a resolution of the Eleventh Assembly. The Commission has appointed various committees for the study of specific subjects. The Secretary-General of the League serves as its secretary.







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